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APPENDIX

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 15, 1971, CERTIORARI GRANTED JANUARY 10, 1972

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

v.

ROBERT WILLIAMS,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Docket Entries.

CIVIL DOCKET

13428

UNITED STATES DISTRICT COURT,

DISTRICT OF CONNECTICUT.

TITLE OF CASE	ATTORNEYS
ROBERT WILLIAMS	For Plaintiff:
v.	Robert Williams, 22184 Box 100
FREDERICK E. ADAMS, Warden Connecticut State Prison	Somers, Connecticut 06071
	Edward F. Hennessey III (appointed) Robinson, Robinson & Cole 799 Main Street Hartford, Connecticut
	For defendant:
	Donald A. Browne Assistant State's Attorney for Fairfield County 172 Golden Hill Street Bridgeport, Connecticut

DATE	PROCEEDINGS
1969	
Sept. 29	Order to Show Cause Why a Writ of Habeas Corpus Should not be Granted, entered. Ordered that Frederick E. Adams, Warden of the

DATE	PROCEEDINGS
	Connecticut State Prison, or his duly authorized representative, show cause, if any there be, on or before October 7, 1969, why a writ of habeas corpus should not issue; and that as a part of said return, the respondent shall file a copy of the Findings of Fact on the State Supreme Court Appeal, a transcript of any previous habeas corpus hearings together with the court's memorandum, and a statement of the issues on which state court jurisdiction has been exhausted and those which have not yet been ruled upon.
	Clarie, J. Copy mailed Petitioner; Attested copies of Order and copy of Petition mailed to Warden and State's Attorney Otto Saur. M-10/7/69.
Sept. 29	Petition for Writ of Habeas Corpus, filed.
Oct. 8	Appearance of Donald A. Browne, Assistant State's Attorney for Fairfield County, entered for Respondent.
Oct. 8	Return to Writ of Habeas Corpus with attached copy of Finding, filed.
Oct. 13	Motion for Assignment of Counsel and Affidavit, filed by Petitioner. Copy mailed Assistant State's Attorney.
Oct. 21	Order Granting Leave to Proceed in Forma Pauperis, entered. Ordered that the motion be granted and Attorney Edward F. Hennessey, III, 799 Main Street, Hartford, Connecticut is hereby appointed as his counsel. Clarie, J. M-10/21/69 Copies mailed Petitioner, Attorney Hennessey and Assistant State's Attorney Browne.
Oct. 22	Copies of all papers filed mailed to Attorney Hennessey.

Docket Entries.

DATE	PROCEEDINGS
Nov. 14	Hearing on Writ of Habeas Corpus. Four petioner's witnesses sworn and testified. Petitioner's Exhibit B*, Copy of State Court transcript, pages 2 thru 80, filed. Briefs to be filed on December 8, 1969. Case concluded. (*A, Xerox copy of pages of transcript (pages 2 thru 24), filed.) Clarie, J. M-11/14/69
Nov. 21	Marshal's Return Showing Service, filed.—Writ (Body Writ issued November 10, 1969)
Dec. 30	Court Reporter's Notes of Proceedings of November 13, 1969, filed at Hartford. Sperber, R.
1970	
Jan. 6	Draft Findings, filed by Petitioner.
Jan. 6	Claims of Law, filed by Petitioner.
Jan. 6	Respondent's Brief in Opposition to Granting Writ of Habeas Corpus, filed.
Jan. 6	Ruling on Petition for Writ of Habeas Corpus entered. The writ of habeas corpus is denied and dismissed. So Ordered. Clarie, J. M-1/6/70 Copies mailed Attorney Hennessey, Assistant State's Attorney Browne and to Petitioner.
Jan. 8	Judgment entered in favor of respondent, dismissing the petition for writ of habeas corpus. Earl, C. Copies mailed Attorney Hennessey, Assistant State's Attorney Browne and to Petitioner. M-1/9/70
Feb. 4	Application for Certificate of Probable Cause, filed by Petitioner.
Feb. 4	Notice of Appeal, filed by Petitioner.

Docket Entries.

DATE	PROCEEDINGS
Feb. 4	Motion for Leave to Appeal in Forma Pauperis, filed by Petitioner.
Feb. 4	Affidavit of Indigency, filed by Petitioner.
Feb. 4	Motion for Appointment of Counsel, filed by Petitioner.
Feb. 4	Motion for Extension of Time to Order Transcript, filed by Petitioner.
Feb. 4	Motion for Free Transcript, filed by Petitioner.
Feb. 10	Ruling on Petition for a Certificate of Probable Cause, entered. The application for probable cause is denied; and the Court hereby certifies in writing that the petitioner's application to appeal in forma pauperis is denied, in accordance with 28 U.S.C.A. § 1915. Clarie, J. M-2/10/70. Copies mailed to Petitioner and counsel.
Feb. 17	Copy of Application for Certificate of Probable Cause to the U. S. Court of Appeals, Second Circuit, filed by appellee.

Petition for a Writ of Habeas Corpus.

The Petitioner, acting herein by Special Public Defender, alleges as follows:

1. The Petitioner is presently incarcerated in the State Prison at Somers, Connecticut.

2. The cause of his imprisonment arose as follows:

(a) On October 30, 1966 the Petitioner was searched and then arrested without a warrant. Thereafter he was searched for a second time. The State claimed to have seized a gun during the first search and a certain quantity of heroin and certain narcotics paraphernalia during the second search.

(b) On October 31, 1966 the Petitioner was presented before the Second Circuit Court on an Information charging violations of 29-38, 53-206, and 19-246.

(c) On December 8, 1966, a Motion to Suppress was filed (Exhibit A) and a plea of not guilty was entered to all counts.

(d) On December 22, 1966 a hearing was held on said Motion together with a hearing in probable cause at which hearing the Motion was denied and the Court made a finding of probable cause based on the evidence presented on said Motion (a transcript being affixed as Exhibit B).

(e) On April 4, 1967 the Superior Court for Fairfield County heard and denied a second Motion to Suppress.

(f) An April 28, 1967, after a verdict and finding of guilty on a three count Information charging violations of 19-246, 29-35 and 29-38, the Petitioner was sentenced to the State Prison at Somers for not more than six (6) years as a maximum term and not less than three (3) years as a minimum term on the First Count, one (1) year on the Second Count and one (1) year on the Third Count by the Superior Court in and for Fairfield County, Judge Radin presiding.

(g) The Supreme Court of Connecticut affirmed the Petitioner's conviction, *State* v. *Williams,* 157 Conn. (Connecticut Law Journal, 11/12/68).

(h) During the period from October 30, 1968 when the Petitioner was arrested until April 28, 1967 when he commenced his present sentence, he was incarcerated in the Correction Center in Bridgeport in lieu of bond.

3. Prior to this Petition, Petitioner filed a Petition for Habeas Corpus in the Superior Court for Hartford County (a copy of which is attached as Exhibit A-1). On July 23, 1969 the State filed a response (a copy of which is attached as Exhibit B-1). On August 7, 1969 an Amended Petition was filed in the aforesaid action (a copy of which is attached as Exhibit C-1).

4. The Petitioner now claims that his detention is illegal for the following reasons:

(a) The Superior Court lacked jurisdiction over the person of the Petitioner for the reasons that:

(1) His arrest was without warrant and was not based upon probable cause.

(2) The finding of probable cause in the Circuit Court was based on evidence which was the fruit of an illegal search.

(3) Any consent to a finding of probable cause was based on the Court's erroneous denial of the Petitioner's Motion to Suppress.

(b) The Petitioner's conviction was based on evidence which was obtained as the result of two illegal searches.

(c) The Petitioner was denied the effective assistance of counsel for the reasons that:

(1) Petitioner was not afforded the time or means to consult with his court-appointed counsel in the Circuit Court.

(2) Petitioner was not advised of his right to petition for a speedy trial.

(3) Petitioner was ill and was denied adequate medical attention while confined and therefore was unable to adequately participate in his own defense.

(4) Counsel failed to assert his claim of denial of adequate representation on appeal.

(d) Petitioner was denied a speedy trial for the reasons that:

(1) The Petitioner was incarcerated for six (6) months before being brought to trial.

(2) The Petitioner was not advised as to his right to move for a speedy trial and therefore did not waive his right to same.

(3) A portion of the delay in bringing the Petitioner to trial was caused by the State's effort to find evidence to establish its case on the First Count.

5. The Petitioner claims that his present incarceration violates the Fourth, Sixth and Fourteenth Amendments of the United States Constitution.

Wherefore, the Petitioner prays that a Writ of Habeas Corpus issue to bring him before said Court that justice may be done.

Dated at Somers, Connecticut this 11th day of August 1969.

ROBERT WILLIAMS—PETITIONER

By /s/ Robert Williams
Robert Williams—No. 22184
Box 100
Somers, Connecticut 06071

Exhibit "A", Annexed to Petition for a Writ of Habeas Corpus.

CR 2-27188

STATE OF CONNECTICUT CIRCUIT COURT, SECOND CIRCUIT

VS: AT BRIDGEPORT

ROBERT WILLIAMS DECEMBER 8th, 1966.

MOTION TO SUPPRESS CERTAIN EVIDENCE

The defendant, Robert Williams, in the above captioned criminal action now pending before this Court, respectfully requests the Court to suppress, as evidence, certain tangible things seized by the Bridgeport Police Officers on October 31st, 1966, for the following reasons:

I. UNREASONABLE SEARCH AND SEIZURE

Said tangible things were seized as the result of an unreasonable search in violation of Article I, of the Connecticut Constitution, in violation of the 4th and 14th Amendments to the Constitution of the United States and, in violation of Public Act 652, 1963 Public Acts of Connecticut, as amended, in that said search was not made with a search warrant and was made without the consent of the accused.

II. SAID SEARCH AND SEIZURE WAS NOT INCIDENTAL TO A LAWFUL ARREST

Said tangible things were not seized as the result of a search incidental to a lawful arrest.

THE DEFENDANT
ROBERT WILLIAMS

By .....
DOMENICK J. GALLUZZO
RICHARD T. MEEHAN
PUBLIC DEFENDERS
CIRCUIT COURT II

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

HEARING ON MOTION TO SUPPRESS CERTAIN EVIDENCE (1)

CR 2-27188

STATE OF CONNECTICUT — CIRCUIT COURT, 2ND CIRCUIT

VS. — HELD AT BRIDGEPORT

ROBERT WILLIAMS — DECEMBER 22, 1966

BEFORE: HON. GEORGE DI CENZO, Judge.

APPEARANCES:

JOHN EVANS, Esq., Prosecuting Attorney.

DOMENICK GALLUZZO, Esq., Attorney for Defendant.

EMANUEL PALLANT
Official Reporter

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(2) Mr. Evans: This is the case of State vs. Robert Williams, CR-2-27188, represented by Attorney Galluzzo.

The accused is charged with Carrying Weapon in motor vehicle, 29-38; second count, Carrying Concealed Weapon, 53-206; violation of Narcotic Act, 19-246.

He has entered a plea of not guilty. Mr. Galluzzo desires to address the Court.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

Mr. Galluzzo: If your Honor please, there has been a motion for production and disclosure in which Mr. Evans gave me oral compliance with it, the motion to produce copies of the arrest affidavit and inventory in regard to this present arrest.

Mr. Evans: We complied with whatever Mr. Galluzzo desired. The fact of the matter is, the Court should know and the record should disclose, there was no arrest warrant or search warrant involved in this matter before your Honor.

Mr. Galluzzo: We also have a motion to suppress certain evidence which testimony we are ready to present to your Honor.

Mr. Evans: Mr. Galluzzo and I have discussed this before. The testimony on this motion would be also identical with the testimony, if any, on a hearing in Probable Cause, should the defendant not waive.

Mr. Galluzzo: That is correct, your Honor. If (3) sufficient evidence comes out in the motion to suppress which would indicate probable cause, and if you should deny the motion to suppress, we are willing to waive the hearing in probable cause at this time.

The Court: All right. Proceed.

* * * * * *

JOHN CONNOLLY, 75 Success Avenue, Bridgeport, Connecticut, first having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Galluzzo:

Q. Are you a regular member of the Bridgeport Police Department? A. I am, sir.

Q. And on the date of October 31, 1966, at about one thirty in the morning, were you then a member of the

Bridgeport Police Department? A. That is the thirtieth, sir.

Q. The night of the thirtieth and the morning of the thirty-first? A. The morning of the thirtieth.

Q. The morning of the thirtieth. Excuse me. A. Yes, I was.

Q. And on that morning, officer, did you have occasion to come across the accused, Mr. Robert Williams, in the vicinity of Hallett Street? A. I did.

Q. At that time, officer, was Mr. Williams sitting in an automobile? A. Yes.

Q. And when you approached this automobile, did you see (4) any act or anything about the possession of Mr. Williams at that time which would indicate that he was involved in the commission of a crime? A. No, sir.

Q. At that time, officer, did you have on your person any arrest warrant or search warrant issued for the arrest of Mr. Robert Williams? A. No, sir.

Q. At that time, officer, did you search this accused, Mr. Robert Williams? A. Yes, sir.

Q. Did you subsequently place him under arrest? A. Yes, sir.

Q. And this was after the search; is that right, officer? A. Yes, sir.

Mr. Galluzzo: No further questions.

Cross Examination by Mr. Evans:

Q. At what time on said date did you receive any information regarding the accused? A. Two fifteen A.M.

Mr. Galluzzo: I object, if your Honor please.

Mr. Evans: I claim it.

Mr. Galluzzo: If he received information regarding—

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

The Court: The officer testified that he made an arrest without any grounds whatever.

Mr. Evans: That is not my understanding of the testimony, your Honor.

The Court: He asked, did you see anything on the defendant that indicated that he was in the commission of any crime, and the answer was, no.

(5) Mr. Evans: That is precisely why this question, this line of interrogation is necessary, to establish for the benefit of the Court how it came about that he ultimately met the accused at that time and place. I will connect it up.

The Court: I will let him answer.

Mr. Evans: There is more than one way to make an arrest, as your Honor well knows.

The Court: You may answer it.

By Mr. Evans:

Q. Do you remember the question, Sergeant? A. Yes, I do.

Q. Will you please answer that. A. Approximately 2:15 a.m. on that day.

Q. You received certain information? A. Yes, sir.

The Court: What day, Sergeant; on the twenty-nineth or thirtieth?

The Witness: The thirtieth.

Q. This was about 2:15, Sergeant? A. Yes, sir.

The Court: Was this after the arrest?

Mr. Evans: No, your Honor.

The Witness: Prior to it.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

Q. I beg your pardon. What time was the arrest, Sergeant? A. At two-twenty.

Q. Let's get back. Did you say two-fifteen? A. Yes, sir.

Q. You were in a radio car; is that correct? (6) A. Yes.

Q. And did you receive—don't tell me what it was—Did you receive certain information; did you get a call regarding the accused? A. Yes, sir.

Q. All right. This was at two-fifteen; is that correct? A. Yes, sir.

Q. As a result of that call, as a result of that police signal, what, if anything, did you do? A. I went to the car of the accused.

Q. How long did it take you to get to the car of the accused from the time you received the signal regarding this accused? A. Between three and five minutes.

Q. Was there any break in the continuity? A. No, sir.

Q. As a result of that signal received some three to five minutes before, you then immediately went to his vehicle; is that correct? A. That's correct, sir.

Q. And also, as a result, is it fair to say, as a result of that signal you knew what you were looking for; is that fair?

Mr. Galluzzo: I object.

A. Yes, sir.

Mr. Evans: I claim it, if your Honor please.

The Court: I will allow it.

Q. What were you looking for? A. A gun, sir.

Q. And did you find that gun? A. Immediately, sir.

Q. This was about—You tell me how long it was since you received the signal? A. Approximately three to five minutes.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

(7) Q. And the act that you committed on the person of the accused, namely the taking of the weapon, was that in any way connected with the signal received at two-fifteen? A. Yes, sir. The entire source.

Q. How long have you been on the Bridgeport Police Force? A. This is my twentieth year.

Q. Would you describe this arrest as acting on speedy information? A. By all means, sir.

Q. Now, having found that weapon, would you tell me what it was? A. A thirty-two fully loaded army revolver.

Q. Where was it? A. In the waistband of the accused.

Q. And then, thereafter, what happened thereafter? A. I made a further search. I placed the accused under arrest and made a further search of his person.

Q. Tell the Court what else you found in the way of contraband or instruments of crime? A. I found a small jar containing narcotics in the right pocket of his leather jacket. Immediately under the accused I found a machete. A further search of the accused yielded twenty-seven packets of a white powdered substance which a field test established as heroin.

Mr. Galluzzo: I object.

Mr. Evans: I won't claim the latter portion.

Mr. Galluzzo: May it be stricken, if your Honor please?

The Court: It may be stricken.

Q. I ask you to examine this paper, Sergeant. Are you familiar with it? A. Yes, sir.

(8) Q. Would you tell me what it is? A. It's a report from the State Division Laboratory.

Q. With respect to the given accused? A. Yes. Substances that were forwarded to the State Laboratory.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

Mr. Evans: I offer it, if your Honor please.

Mr. Galluzzo: If your Honor please, for the purpose only of this proceeding, I won't have any objection to the production of the evidence.

The Court; Mark it State's Exhibit A.

(Whereupon the above referred document was marked State's Exhibit A.)

Q. Incidentally, at any time prior to the arrest, you tell the Court, did you or did you not advise him of his rights, the so-called Miranda—

Mr. Galluzzo: I object.

A. Upon finding the revolver—

Mr. Evans: I would claim that, if your Honor please.

Mr. Galluzzo: I object, if your Honor please. The direct testimony was limited to this officer's—

Mr. Evans: Very well, I won't press it.

Q. Did you find anything else on his person? A. Assorted items; train ticket to New York.

Q. Incidentally, did you have a conversation with him? A. Yes, sir.

Mr. Galluzzo: I object to any conversation the police officer had.

(9) The Court: This is a hearing in probable cause. I have enough to bind him over.

Mr. Galluzzo: If your Honor please, I would like to make my argument for the record. The testimony of the police officer is, he claims, that he made a search of this individual and after this search, he placed this man under

arrest. My claim is this, that if the State claims speedy information in the arrest and apprehension of this accused —first of all, there was no personal observation by the police officer that any crime or criminal act had been—

The Court: It doesn't have to be.

Mr. Galluzzo: —committed by the accused.

The Court: There doesn't have to be.

Mr. Galluzzo: Second of all, any information he received was strictly hearsay and that if it gave anything at all, it didn't give him probable cause to make the arrest.

The Court: That is not the law.

Mr. Galluzzo: He made an arrest after a search. The search is made incidental to the arrest and the man is arrested and articles are found on him. In this case, the search was made, and then this man was placed under arrest.

I claim the search is illegal in accordance with my motion to suppress, an unreasonable search and seizure prior to the arrest with no probable (10) cause, no scintilla of evidence whatsoever. It was not incidental to a lawful arrest because no arrest occurred until after the articles were seized. There are many cases in our—

The Court: Which charge are you talking about; the gun or heroin?

Mr. Galluzzo: I'm talking about all, if your Honor please. My statements are directed to the direct testimony of this police officer in which he says he searched this man and after a search of this man, the arrest was then made. Any articles claimed to be confiscated by this search, before an arrest was made by this man, I feel is unlawful, and that all these articles should be suppressed because of that factor. A police officer cannot use mere speculation as the basis of an arrest even if it is claimed to be on speedy information.

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

The law, as I understand it, on speedy information relates to the fact that once speedy information is had, probable cause existed for an arrest at which time, after the arrest is made, any articles, confiscated at that time would be under color of lawful arrest. But, here we have a search that was made prior to a lawful arrest. Any articles found incidental to that search cannot be introduced in evidence against this man and must be suppressed.

In this case the police officer himself stated (11) both by my examination and in the examination of Mr. Evans, that the arrest was after the search and after the gun was found. There was no personal observation by the police officer. There was no probable cause by the police officer. If anything, the State only had a hearsay statement by somebody which this Court does not know anything about. That is my argument. Not only should the gun be suppressed, but everything that followed was on an illegal arrest due to the fact that he was arrested only after the seizure, not under the color of the authority of an arrest, whether with or without warrant.

Mr. Evans: May I be heard, your Honor?

The Court: Very well.

Mr. Evans: I think my brother has confused the chronology. As I remember the testimony of this officer—he still has not completely been examined and may be examined or re-examined by Mr. Galluzzo in the discretion of the Court—the sequence, as I recall it, speedy information at two-fifteen. Five minutes later he picks up the weapon; picks up the weapon based on speedy information; having had probable cause, he picks up the weapon. No search at that point. After he gets the weapon, consequently the arrest; after the arrest comes the search. That is perfect in accord with the recent cases.

The Court: Anything further?

Exhibit "B", Annexed to Petition for a Writ of Habeas Corpus.

(12) Mr. Galluzzo: If your Honor please, my recollection—if the Court would permit me—to get back to my direct examination, the first few questions, said that this man searched this accused. The police officer searched this accused and after finding certain items, did then place him under arrest.

The Court: Motion is denied.

Mr. Galluzzo: May I take an exception?

The Court: Noted.

Mr. Galluzzo: If your Honor please, in view of the circumstances which came out in our motion to suppress, we are willing to waive our hearing in probable cause and enter a plea of not guilty on all the charges involved.

The Court: Probable cause is found. The defendant is bound over to the next criminal session of the Superior Court for Fairfield County under a bond of $10,000.00.

Exhibit "A-1", Annexed to Petition for a Writ of Habeas Corpus.

SUPERIOR COURT

HARTFORD COUNTY

March 20, 1969

No. 158918

ROBERT WILLIAMS

vs.

FREDERICK G. REINCKE, WARDEN, CONNECTICUT STATE PRISON

AMENDED PETITION FOR HABEAS CORPUS

The Petitioner, acting herein by Special Public Defender, alleges as follows:

1. The Petitioner is presently incarcerated in the State Prison at Somers, Connecticut.

2. The cause of his imprisonment arose as follows:

(a) On October 30, 1966 the Petitioner was searched and then arrested without a warrant. Thereafter he was searched for a second time. The State claimed to have seized a gun during the first search and a certain quantity of heroin and certain narcotics paraphernalia during the second search.

(b) On October 31, 1966 the Petitioner was presented before the Second Circuit Court on an Information charging violations of 29-38, 53-206, and 19-246.

(c) On December 8, 1966, a Motion to Suppress was filed (Exhibit A) and a plea of not guilty was entered to all counts.

(d) On December 22, 1966 a hearing was held on said Motion together with a hearing in probable cause at which hearing the Motion was denied and the Court made a finding of probable cause based on the evidence presented on said Motion. (a transcript being affixed as Exhibit B).

(e) On April 4, 1967 the Superior Court for Fairfield County heard and denied a second Motion to Suppress.

(f) On April 28, 1967, after a verdict and finding of guilty on a three count information charging violations of 19-246, 29-35 and 29-38, the Petitioner was sentenced to the State Prison at Somers for not more than six (6) years as a maximum term and not less than three (3) years as a minimum term on the First Count, one (1) year on the Second Count and one (1) year on the Third Count by the Superior Court in and for Fairfield County, Judge Radin presiding.

(g) The Supreme Court of Connecticut affirmed the Petitioner's conviction, *State* v. *Williams,* 157 Conn. (Connecticut Law Journal, 11/12/68).

(h) During the period from October 30, 1966 when the Petitioner was arrested until April 28, 1967 when he commenced his present sentence, he was incarcerated in the Correction Center in Bridgeport in lieu of bond.

3. Prior to this Petition, the Petitioner has not filed any other habeas corpus petitions.

4. The Petitioner now claims that his detention is illegal for the following reasons:

(a) The Superior Court lacked jurisdiction over the person of the Petitioner for the reasons that:

(1) His arrest was without warrant and was not based upon probable cause.

Exhibit "A-1", Annexed to Petition for a Writ of Habeas Corpus.

(2) The finding of probable cause in the Circuit Court was based on evidence which was the fruit of an illegal search.

(3) Any consent to a finding of probable cause was based on the Court's erroneous denial of the Petitioner's Motion to Suppress.

(b) The Petitioner's conviction was based on evidence which was obtained as the result of two illegal searches.

(c) The Petitioner was denied the effective assistance of counsel for the reasons that:

(1) Petitioner was not afforded the time or means to consult with his court-appointed counsel in the Circuit Court.

(2) Petitioner was not advised of his right to petition for a speedy trial.

(3) Petitioner was ill and was denied adequate medical attention while confined and therefore was unable to adequately participate in his own defense.

(4) Counsel failed to assert his claim of denial of adequate representation on appeal.

(d) Petitioner was denied a speedy trial for the reason that.

(1) The Petitioner was incarcerated for six (6) months before being brought to trial.

(2) The Petitioner was not advised as to his right to move for a speedy trial and therefore did not waive his right to same.

(3) A portion of the delay in bringing the Petitioner to trial was caused by the State's effort to find evidence to establish its case on the First Count.

Exhibit "A-1", Annexed to Petition for a Writ of Habeas Corpus.

(e) Petitioner's conviction was illegal because the State based its claim of a valid arrest and search upon knowingly inconsistent evidence in that the evidence of Officer Connolly at the Circuit Court hearing on the Motion to Suppress was different from that subsequently given by the same witness in the Superior Court.

(f) The mittimus to the State Prison and the detention pursuant to it is unlawful because said mittimus does not evidence October 30, 1966 as the date when the Petitioner's confinement commenced, which is improper because:

(1) The Connecticut General Statutes require that Petitioner be credited for preconviction time served.

(2) The failure to credit the defendant for time served in lieu of bond results in a discrimination based solely upon wealth.

(g) The conviction on the Second and Third Counts violates the Petitioner's right to bear arms.

(h) The conviction on the Second and Third Counts violates Petitioner's privilege against double jeopardy since they both punish for a single act; to wit, the possession of a gun.

(i) The Petitioner's conviction is illegal since the Petitioner's right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed.

(j) The conviction on the Third Count is illegal for the reason that the statute contains a presumption which violates the Petitioner's self-incrimination and due process rights.

(k) The conviction for violation of 19-246 was violative of Petitioner's due process rights, since it punishes a per-

son for possession of narcotics when that person is addicted to narcotics and requires such substances to sustain that addiction.

(f) The convictions on all three charges are invalid and violative of due process and inconsistent with the statutes for the reason that the Petitioner at the time of the crimes charged was addicted to opium-derivative drugs and therefore lacked sufficient comprehension and understanding to understand the consequences of his actions and to meaningfully discern and evaluate the illegality of his acts.

5. The conviction resulting from said trial and preliminary proceedings is violative of the Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and of Sections Seven, Eight, Nine, Fifteen and Twenty of Article First of the Connecticut Constitution.

WHEREFORE, the Petitioner prays that a Writ of Habeas Corpus be issued to bring him before said Court that justice may be done.

Dated at Hartford, Connecticut this 20th day of March 1969.

ROBERT WILLIAMS, PETITIONER

By .....
Edward F. Hennessey, III
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

Service certified in accordance with Practice Book Section 80(1).

Exhibit "B-1", Annexed to Petition for a Writ of Habeas Corpus.

SUPERIOR COURT

HARTFORD COUNTY.

July 23, 1969

No. 158918

ROBERT WILLIAMS

vs.

FREDERICK G. REINCKE, Warden, Connecticut State Prison

RETURN TO WRIT OF HABEAS CORPUS

And now comes Frederick Reincke, Warden of the Connecticut State Prison, respondent in the above-entitled cause of action and makes return that:

1. Paragraphs 1, 2(e), 2(f), and 2(g) are admitted.

2. As to paragraphs 2(b), 2(c), 2(d) and 2(h) the respondent has insufficient information to form a belief and leaves the petitioner to his proof.

3. All of the remaining allegations of the petition for habeas corpus are denied.

4. The petitioner Robert Williams is now in the custody of the respondent by reason of a State Prison mittimus based upon a judgment of the Superior Court within and for the County of Fairfield, rendered on the 28th day of April, 1967, a certified copy of which judgment is attached hereto and made a part hereof.

Exhibit "B-1", Annexed to Petition for a Writ of Habeas Corpus.

5. The respondent affirmatively pleads that those portions of this petition relating to alleged illegal search and seizure and speedy trial have previously been considered and determined by the Supreme Court of the State of Connecticut in the case of State vs. Robert Williams, 157 Conn. 114, and that such determination is res judicata and finally determinative on this court.

Respectfully submitted,

FREDERICK REINCKE, Warden
Connecticut State Prison

By Donald A. Browne
DONALD A. BROWNE,
His Attorney

This is to certify that a copy of the foregoing has been mailed to Edward F. Hennessey, III, Esq. counsel for the petitioner.

Donald A. Browne
DONALD A. BROWNE

Exhibit "C-1", Annexed to Petition for a Writ for a Writ of Habeas Corpus

SUPERIOR COURT

HARTFORD COUNTY

August 7, 1969

No. 158918

ROBERT WILLIAMS,

vs.

FREDERICK G. REINCKE, WARDEN,
CONNECTICUT STATE PRISON

SECOND AMENDED PETITION FOR HABEAS CORPUS

The Petitioner, acting herein by Special Public Defender, alleges as follows:

1. The Petitioner is presently incarcerated in the State Prison at Somers, Connecticut.

2. The cause of his imprisonment arose as follows:

(a) On October 30, 1966 the Petitioner was searched and then arrested without a warrant. Thereafter he was searched for a second time. The State claimed to have seized a gun during the first search and a certain quantity of heroin and certain narcotics paraphernalia during the second search.

(b) On October 31, 1966 the Petitioner was presented before the Second Circuit Court on an Information charging violations of 29-38, 53-206, 19-246.

Exhibit "C-1", Annexed to Petition for a Writ of Habeas Corpus.

(c) On December 8, 1966, a Motion to Suppress was filed (Exhibit A) and a plea of not guilty was entered to all counts.

(d) On December 22, 1966 a hearing was held on said Motion together with a hearing in probable cause at which hearing the Motion was denied and the Court made a finding of probable cause based on the evidence presented on said Motion (a transcript being affixed as Exhibit B).

(e) On April 4, 1967 the Superior Court for Fairfield County heard and denied a second Motion to Suppress.

(f) On April 28, 1967, after a verdict and finding of guilty on a three count Information charging violations of 19-246, 29-35 and 29-38, the Petitioner was sentenced to the State Prison at Somers for not more than six (6) years as a maximum term and not less than three (3) years as a minimum term on the First Count, one (1) year on the Second Count and one (1) years on the Third Count by the Superior Court in and for Fairfield County, Judge Radin presiding.

(g) The Supreme Court of Connecticut affirmed the Petitioner's conviction, *State* v. *Williams,* 157 Conn. (Connecticut Law Journal, 11/12/68).

(h) During the period from October 30, 1966 when the Petitioner was arrested until April 28, 1967 when he commenced his present sentence, he was incarcerated in the Correction Center in Bridgeport in lieu of bond.

3. Prior to this Petition, the Petitioner has not filed any other habeas corpus petitions.

4. The Petitioner now claims that his detention is illegal for the following reasons:

Exhibit "C-1", Annexed to Petition for a Writ of Habeas Corpus.

(a) Petitioner's conviction was illegal because the State based its claim of a valid arrest and search upon knowingly inconsistent evidence in that the evidence of Officer Connolly at the Circuit Court hearing on the Motion to Suppress was different from that subsequently given by the same witness in the Superior Court.

(b) The mittimus of the State Prison and the detention pursuant to it is unlawful because said mittimus does not evidence October 30, 1966 as the date when the Petitioner's confinement commenced, which is improper because:

(1) The Connecticut General Statutes require that Petitioner be credited for pre-conviction time served.

(2) The failure to credit the defendant for time served in lieu of bond results in a discrimination based solely upon wealth.

(c) The conviction on the Second and Third Counts violates the Petitioner's right to bear arms.

(d) The conviction on the Second and Third Counts violates Petitioner's privilege against double jeopardy since they both punish for a single act; to wit, the possession of a gun.

(e) The Petitioner's conviction is illegal since the Petitioner's right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed.

(f) The conviction on the Third Count is illegal for the reason that the statute contains a presumption which violates the Petitioner's self-incrimination and due process rights.

Exhibit "C-1", Annexed to Petition for a Writ of Habeas Corpus.

(g) The conviction for violation of 19-246 was violative of Petitioner's due process rights, since it punishes a person for possession of narcotics when that person is addicted to narcotics and requires such substances to sustain that addiction.

(h) The convictions on all three charges are invalid and violative of due process and inconsistent with the statutes for the reason that the Petitioner at the time of the crimes charged was addicted to opium-derivative drugs and therefore lacked sufficient comprehension and understanding to understand the consequences of his actions and to meaningfully discern and evaluate the illegality of his acts.

5. The conviction resulting from said trial and preliminary proceedings is violative of the Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and of Sections Seven, Eight, Nine, Fifteen and Twenty of Article First of the Connecticut Constitution.

WHEREFORE, the Petitioner prays that a Writ of Habeas Corpus be issued to bring him before said Court that justice may be done.

Dated at Hartford, Connecticut this 7th day of August 1969.

ROBERT WILLIAMS, PETITIONER

By

Edward F. Hennessey, III
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

Service certified in accordance with Practice Book, Section 80(1)

Return to Writ of Habeas Corpus.

And now comes Frederick E. Adams, Warden of the Connecticut State Prison, respondent in the above-entitled cause of action and makes return that:

1. Paragraphs 1, 2(e), 2 (f) and 2 (g) are admitted.

2. As to Paragraphs 2 (b), 2 (c), 2 (d), 2 (h) and 3, the respondent has insufficient information to form a belief and leaves the petitioner to his proof.

3. All of the remaining allegations of the petition for habeas corpus are denied.

4. The petitioner Robert Williams is now in the custody of the respondent by reason of a State Prison mittimus based upon a judgment of the Superior Court within and for the County of Fairfield, rendered on the 28th day of April, 1967, a certified copy of which judgment is attached hereto and made a part hereof.

5. The petitioner's claims relating to speedy trial and illegal search have been considered by the state courts of the State of Connecticut and the petitioner appears to have exhausted state court jurisdiction on those matters. (See *State* v. *Williams,* 157 Conn. 114, 249 A.2d 245; cert. denied —— U.S. ——; 37 U.S. Law Week 3451).

6. The respondent affirmatively pleads that the petitioner's claims in the nature of inadequate representation by counsel; inability to participate in his defense by reason of illness; inability to consult with counsel in the Circuit Court; nonadvisement of the right to a speedy trial; deprivation of medical attention; and failure of counsel to pursue a claim of inadequate representation on appeal (i.e., those matters set forth in Paragraph 4(c) (1), (2), (3) and (4) have never been ruled upon by the Courts of

the State of Connecticut and said matter should be submitted for determination by such state courts.

7. The respondent attaches hereto as a part of this return, a copy of the State Court Findings of Fact on appeal.

8. The respondent avers that there have been no prior habeas corpus proceedings and consequently no transcript is included herewith.

Respectfully submitted,

FREDERICK E. ADAMS, Warden
Connecticut State Prison,
Respondent

By Donald A. Browne
Donald A. Browne
His Attorney

This is to certify that a copy of the foregoing has this date been mailed to Robert Williams, Box 100, Somers, Connecticut

.....
Donald A. Browne
Donald A. Browne

Dated at Bridgeport, Connecticut this 6th day of October, 1969

Information and Judgment, Annexed to Return.

SUPERIOR COURT,

FAIRFIELD COUNTY,

CRIMINAL TERM.

January Session, 1967

STATE OF CONNECTICUT

vs.

ROBERT WILLIAMS

OTTO J. SAUR, State's Attorney for Fairfield County accuses ROBERT WILLIAMS then of Bridgeport of the crime of VIOLATION OF UNIFORM STATE NARCOTIC DRUG ACT and charges that on the 30th day of October 1966 at Bridgeport in said County the said Robert Williams did have under his control certain narcotic drugs, to wit: Heroin and Morphine, in violation of Section 19-246 of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said Robert Williams of the crime of CARRYING PISTOL ON PERSON WITHOUT PERMIT and charges that on the 30th day of October 1966 at Bridgeport in said County the said Robert Williams did carry on his person a certain pistol without a legal permit therefor, and not being within his dwelling house or place of business, in violation of Section 29-35 of the Connecticut General Statutes.

AND SAID STATE'S ATTORNEY FURTHER ACCUSES the said Robert Williams of the crime of WEAPONS IN VEHICLES and

charges that on the 30th day of October 1966 at Bridgeport in said County the said Robert Williams did knowingly have in a motor vehicle, owned, operated and occupied by him a certain revolver without a legal permit therefor and a certain knife, the edge portion of the blade of which is in excess of four inches, without a legal permit therefor, in violation of Section 29-38 of the Connecticut General Statutes.

Dated at Bridgeport, Conn., this 3rd day of January 1967.

OTTO J. SAUR
State's Attorney
in and for Fairfield County.

STATE OF CONNECTICUT

SUPERIOR COURT

FAIRFIELD COUNTY

April 28 1967

No. 16,746

STATE

vs.

ROBERT WILLIAMS

PRESENT, HON. MICHAEL RADIN, JUDGE

JUDGMENT

Upon the information of OTTO J. SAUR, Attorney for the State, within and for the County of Fairfield, charging

said ROBERT WILLIAMS, now in the custody of the Sheriff of said County, with the crimes of Violation of Uniform State Narcotic Drug Act,—Section 19-246, Carrying Pistol on Person Without Permit,—Section 29-35, and Weapons in Vehicles, Section 29-38 as per information on file.

The prisoner appeared with his Attorney, G. Sarsfield Ford, and subsequently the Court appointed Bernard Green, Esquire, Special Public Defender to represent the defendant. The prisoner then for plea said "Not Guilty" and elected to be tried by a jury of twelve. He subsequently changed his election and after a full hearing, the Court found the prisoner Guilty on each count.

It is therefore found by the Court that the prisoner is Guilty of Violation of Uniform State Narcotic Drug Act, Section 19-246, Carrying Pistol on Person Without Permit, Section 29-35, and Weapons in Vehicles, Section 29-38 in the manner and form as charged in said information.

The Court thereupon sentenced the said prisoner to be confined for a period not exceeding six years as a maximum term and not less than three years as a minimum term on the first count; one year on the second count and one year on the third count in the Connecticut State Prison at Somers, and to stand committed until said judgment is complied with.

By the Court,

BERNARD J. LUCKART
Assistant Clerk

Information and Judgment, Annexed to Return.

STATE OF CONNECTICUT

FAIRFIELD COUNTY ss.: SUPERIOR COURT

No. 16,746

STATE

vs.

ROBERT WILLIAMS

I, J. LEO CAMPANA, Clerk of the Superior Court for Fairfield County at Bridgeport, hereby certify that the within and foregoing is a true copy of the original Information and Judgment in said cause, as on file and of record appears.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Court at Bridgeport, in said County, this 6th day of October, 1969.

J. LEO CAMPANA, Clerk

by SAMUEL R. SALLICK
Samuel R. Sallick
Deputy Clerk.

State Court Findings of Fact on Appeal.

SUPERIOR COURT

FAIRFIELD COUNTY

September 11, 1967

No. 16746

STATE OF CONNECTICUT

vs.

ROBERT WILLIAMS

FINDING

FIRST: The following facts are found:

1. John Connolly is a sergeant with the Bridgeport Police Department and has been associated with that department for twenty years.

2. Sergeant Connolly was on duty alone in a patrol car on the early morning of Sunday, October 30, 1966, working a shift from midnight to 8:00 a.m.

3. On October 30, 1966, at approximately 2:15 a.m. Sergeant Connolly had a conversation with someone in a gas station situated on the southeast corner of East Main Street and Hamilton Street in Bridgeport.

4. The intersection of East Main Street and Hamilton Street is in a neighborhood with a high rate of crime of various kinds.

5. Sergeant Connolly knew the person who spoke with him, and had received accurate information from this person before and considered this person to be trustworthy and reliable.

6. The same person at that time and place advised Sergeant Connolly that there was a person seated in an automobile nearby with a pistol at his waist and with narcotics.

7. At the same time and place, the same person pointed out a particular car parked on the north side of Hamilton Street facing East Main Street as being the auto in which the person with the gun and narcotics was seated.

8. The automobile was a 1958 tan, Plymouth two-door hardtop.

9. The occupant of the automobile which was pointed out to Sergeant Connolly was the defendant Robert Williams.

10. The defendant was seated on the passenger's side of the front seat of the automobile.

11. At approximately 2:20 a.m., Sergeant Connolly walked alone from the gas station over to the car and tapped on the window and advised the defendant to open the door.

12. At the time Sergeant Connolly approached the defendant in the automobile, he was alone.

13. The defendant did not open the door but rolled down the window.

14. After the defendant rolled down the automobile window, Sergeant Connolly reached in and removed a fully loaded 32 caliber Army Special revolver from the waistband of the defendant's trousers.

15. Sergeant Connolly put his hand through the defendant's open coat and directly onto the revolver without feeling around the defendant's waistband.

16. The revolver was exactly where the person in the gas station had told Sergeant Connolly it was.

State Court Findings of Fact on Appeal.

17. After Sergeant Connolly removed the revolver, he advised the defendant that he was under arrest.

18. Prior to advising the defendant that he was under arrest, Sergeant Connolly had not made any search of the defendant's pockets or clothing.

19. Other members of the Bridgeport Police Department arrived at Hamilton Street in response to a call from Sergeant Connolly.

20. After the defendant was advised that he was under arrest, a search was made of his person and of the automobile at the scene on Hamilton Street.

21. The defendant had 21 cellophane packets containing a white substance in his wallet and an additional 6 cellophane packets of a similar white substance in rolled balloons in a jar in his right-hand coat pocket.

22. These packets were marked by members of the Bridgeport Police Department and were forwarded to the State Toxicological Laboratory in Hartford for analysis.

23. Ten of the packets were examined by Dr. Abraham Stolman of the State Toxicological Laboratory and all ten were determined to contain heroin.

24. A search of the automobile made on Hamilton Street disclosed a machete under the front seat and another different revolver in the trunk of the car.

25. Robert Williams had never obtained a permit from the Bridgeport Police Department to carry a pistol in that city.

26. At police headquarters, a police detective, James Nilan, found a set of "works" consisting of a hypodermic needle, a bulb, a cooker (or cap) and a piece of cotton residue on top of the defendant's head, under his hat.

State Court Findings of Fact on Appeal.

27. The defendant appeared in the Circuit Court Second Circuit on October 31, 1966.

28. At that time, the defendant was advised of certain constitutional rights by a judge of the Circuit Court.

29. On October 31, 1966, the defendant's case in the Circuit Court was continued until November 3, 1966.

30. On November 3, 1966, a public defender was assigned to represent the defendant in the Circuit Court and the case was continued until November 8, 1966.

31. On November 8, 1966, the defendant's bond was reduced to $1000 and the case was continued to November 15, 1966.

32. The defendant's case in Circuit Court was subsequently continued nisi (without date) pending the results of the laboratory analysis of the white powder found on his person.

33. Domenick J. Galluzzo and Richard T. Meehan are practicing Connecticut attorneys and in the months of October, November and December, 1966, both served as public defenders in the Circuit Court Second Circuit which accompasses the Bridgeport area.

34. Attorneys Galluzzo and Meehan filed a written appearance in the Circuit Court in behalf of the defendant Robert Williams, on November 3, 1966.

35. During the time that the defendant's case was within the jurisdiction of the Circuit Court, Attorney Galluzzo had several conversations with him.

36. During the time that the defendant's case was within the jurisdiction of the Circuit Court, Attorney Galluzzo and Attorney Meehan had several conversations with one John Evans, Chief Prosecutor of the Second Circuit Court, concerning the defendant's case.

State Court Findings of Fact on Appeal.

37. On December 8, 1966, the defendant appeared in Circuit Court and pleaded Not Guilty to the three charges against him.

38. On December 8, 1966, Attorney Galluzzo and Attorney Meehan filed a Motion for Production and Disclosure in the Circuit Court in behalf of the defendant Robert Williams.

39. On December 8, 1966, Attorney Galluzzo and Attorney Meehan filed a Motion to Suppress Evidence in the Circuit Court in behalf of the defendant Robert Williams.

40. The defendant's case in the Circuit Court was continued from November 8, 1966, until December 8, 1966, because the State Laboratory needed time to complete an analysis of certain items which had been found on the defendant's person.

41. It takes from six to eight weeks to obtain such an analysis from the State Toxicologial Laboratory.

42. The items referred to the State Toxicological Laboratory were returned to the Bridgeport Police sometime after November 30, 1966.

43. On December 22, 1966, in the Second Circuit Court, a hearing was held on the Motion to Suppress Evidence which Attorneys Galluzzo and Meehan had filed in behalf of the defendant.

44. At the hearing on the Motion to Suppress, Attorney Galluzzo questioned Sergeant Connolly relative to the events of the defendant's arrest on October 30, 1966.

45. On December 22, 1966, the defendant's case was bound over to the January 1967 Term of the Superior Court for Fairfield County.

State Court Findings of Fact on Appeal.

46. The defendant never filed any motion in the Circuit Court requesting an immediate hearing or a speedy trial.

47. On January 1, 1967, there were 134 criminal cases pending in the criminal side of the Superior Court for Fairfield County.

48. Approximately 60 additional cases were bound over to the January 1967 Term of the criminal side of the Superior Court for Fairfield County.

49. During the months of January, February and March, 1967, at least one court was continuously operating as a criminal court in the Superior Court for Fairfield County.

50. From February 21, 1967 to March 21 or 22, 1967, there were two courts continuously operating exclusively with criminal cases in the Superior Court for Fairfield County.

51. During the months of February, March and April, 1967, there were 28 trials of Criminal cases in the Superior Court for Fairfield County and the total of 128 Criminal cases were disposed of.

52. On the date of the defendant's arraignment in the Superior Court for Fairfield County, he conferred with a Mr. Ford, Assistant Public Defender for Fairfield County.

53. On February 2, 1967, Bernard Green was appointed Special Public Defender for the defendant in the Superior Court for Fairfield County.

54. On March 20, 1967, in the Superior Court for Fairfield County, the defendant's attorney made an oral motion for a speedy trial.

State Court Findings of Fact on Appeal.

55. Following that motion, the defendant's case was assigned to the first following trial date on April 4, 1967, which was three court days following his oral motion.

56. The defendant never filed any written motion in the Superior Court for Fairfield County requesting an immediate hearing or a speedy trial.

SECOND: The following conclusions have been reached:

57. The defendant was not subjected to an unreasonable search or seizure under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

58. The defendant was not denied a speedy trial under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

59. The defendant was not subjected to cruel and unusual punishment under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

60. The defendant was not denied assistance of counsel under the provisions of the Constitution of the United States and the Constitution of the State of Connecticut.

61. The defendant was Guilty as charged in all counts of the Information.

THIRD: The defendant made the following claims of law respecting the judgment to be rendered:

62. The initial seizure of the pistol was the result of an illegal search and seizure and, therefore, could not form the basis for a legal arrest.

63. The arrest made of the defendant was the result of an illegal search and seizure and, therefore, was an illegal arrest.

State Court Findings of Fact on Appeal.

64. All weapons and items of narcotics produced in evidence at the trial were found as the result of a search and seizure made incident to an illegal arrest and, therefore, should have been suppressed.

65. Five and one-half months was an unreasonably long period of time to hold the accused without bringing him to trial and that, therefore, he was denied a right of speedy trial and should have been discharged.

66. The accused was effectively denied access to and assistance of counsel in the preparation of his defense for a period of some three months, in violation of the Constitutions of the United States of America and the State of Connecticut.

67. The accused was subjected to cruel and unusual punishment as a result of his physical condition and the conditions of his confinement, all in violation of the Constitutions of the United States of America and the State of Connecticut.

Notwithstanding said claims, the court ruled as on file.

FOURTH: The court made the following rulings on the trial:

68. The police officer testified at the hearing on the motion to suppress that he had received information from an informant that the accused had narcoties and weapons on his person. On cross-examination, the following occurred:

"Q. Now, who was the informant who spoke to you in the parking lot of the gas station?

Mr. Browne: Object to that, your Honor.

The Court: Objection sustained.

Mr. Green: I claim it, your Honor. May I know the basis of the objection, your Honor?

Mr. Browne: I think that is in the nature of a privileged communication. I rely on the very recent decision of *McCray* versus somebody in the United States Supreme Court, which holds that in the nature of a privileged communication. There is no obligation on the police officer to disclose who the informant is.

Mr. Green: I don't think there is any Connecticut decision that holds that, your Honor. The *McCray* case which came down very recently merely holds that the obligation to disclose is not constitutional in its nature. And I claim that under 6-49, the arrest statute—and I presume it is claimed here that the search was incidental to an arrest—that the officer has to have reasonable grounds that a felony was being committed.

Now, in determining whether or not he has reasonable grounds and whether a felony was being committed, I certainly think the person who gave him the information becomes extremely important. Outside of that, the court cannot make a determination of this issue.

The Court: Objection is overruled without comment. I don't see any need for having anything on the record. I think it is a well known fact of disclosure of this type, of this nature.

Mr. Green: I presume your Honor is ruling that the State's objection is sustained.

The Court: That's correct.

Mr. Green: May I have an exception?

The Court: You may have an exception."

69. Thereafter, the following occurred:

"Q. Do you know whether or not your informant had a criminal record? A. I believe the informant did.

Q. And was her name Jane Cooper?
Mr. Browne: Object to that, your Honor.
The Court: Objection sustained.
Mr. Green: May I have an exception?
The Court: You may have an exception."

70. The defendant offered evidence at the trial in support of his claim that he was denied a speedy trial. After the defendant had completed his testimony in support of the motion, the State produced as a witness, John Raineault, County Detective attached to the State's Attorneys Office, at Fairfield County, who testified that as part of his duties he kept a list of cases pending and disposed of in this Court. Then the following occurred.

"Q. Detective, can you tell his Honor how many cases were pending, criminal cases were pending, in the criminal side of Superior Court on January 1st of 1967?

Mr. Green: Objection.

The Court: What is the reason for that offer?

Mr. Browne: Well, your Honor, I think that this goes to the question of the speedy trial; that one of the elements which our Supreme Court says must be considered in determining whether or not any accused has been denied a speedy trial is the question of the other business before the Court and the other business which a Court has to handle. I think that that is an element which should at least be stated for the record for purposes of review if there ever is any review of this hearing. I think I am entitled to put in the record the amount of business which was being handled by the Court at this time.

I am referring your Honor, to *State* versus *Hodge*, an April, '66 case. I think that we are entitled to show for the record what the type of business was

being handled by our Court, and the fact that we were steadily engaged in the trial of cases during those months.

One of my purposes with this witness is to put into the record the number of cases which were actually tried and disposed of by the Criminal Superior Court during those months.

The Court: Objection overruled.

Mr. Green: May I have an exception?

The Court: You may have an exception."

71. The defendant made objection to the admission of evidence of the weapons and the items and the narcotics that were seized from the defendant or taken from his automobile as a result of the search and seizure claimed to be illegal. The objection to the admission of these items as full exhibits were, in each instance, overruled by the court and, in each instance, an exception was taken by the defendant from the court's ruling.

72. Detective Nilan of the Bridgeport Police Department testified that he found on the person of the accused a needle, an eyedropper, a cooker and some toilet tissue. Thereafter, the accused objected to the admission of testimony by Detective Nilan as to what these items were ordinarily used for, which objection was sustained by the court.

73. Thereafter, the State offered in evidence, as and for Exhibit "A" which offer included the medicine dropper, bottle cap, hypodermic needle and needle holder. Then, the following occurred:

"Mr. Green: May I state my objection further, your Honor?

The Court: Oh, certainly.

State Court Findings of Fact on Appeal.

Mr. Green: With respect to the medicine dropper, the bottle cap, the hypodermic needle and the needle holder, these are things that are totally immaterial to these proceedings on the basis of this claim, the State's claim.

I think the State is not claiming the man was a user, and the medicine dropper did not have any of the narcotic drugs that were specified in the information on it.

There is one item we don't have listed. Apparently the screw cap did. One of these other items did. I think the tube that was defaced, whatever that is. That quinine hypodermic needle had nothing and the needle holder had nothing.

Now, on that basis, it seems to me these exhibits are totally immaterial to these proceedings, and I object to those particular items in the envelope for that reason.

Mr. Browne: The needle and holder—

Mr. Green: I would be the last person in the world to give full reliance to my notes, but they indicate on the medicine dropper that quinine was found. The information makes no allegation with respect to quinine, it makes allegations with respect to morphine and heroin. The hypodermic needle and the needle holder were "clean." They had no drugs on them at all. And then there is a fifth item which the report indicates had nothing on it but quinine.

Mr. Browne: As I understand it, your Honor, the needle holder and the medicine dropper did not show narcotics. The 27 envelopes, the screw cap and cotton and white toilet tissue all did. Again, your Honor, I say and I feel that these items are all material. They are all items which were in fact found on this accused on this particular day. I think that they go to sub-

stantiate the fact that he in fact had narcotics under his control on that date.

The Court: Are you going on the reason that they are associated and come within the statutory provision?

Mr. Browne: I will say this, your Honor, that I think the evidence of the testimony of Detective Nilan was that these were all found at one time in one location under his hat. And the fact that the dropper, the needle and the needle holder were all found part and parcel and at the same time in the location with the toilet tissue and cap and cotton, which do contain narcotics, I think they make them all relevant. Whether or not there were narcotics found in each individual item may go to the weight of the evidence. I think we do have evidence here that at the same time and at the same location under this man's hat were found five things, two of which contained narcotics by analysis and three of which did not. I think they were all found at the same location at the same time. I think they are all admissible. And the fact that there actually was no narcotics in one or two of them goes to the weight of the evidence.

The Court: Objection overruled.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Mr. Green: I believe I also stated the objection for the record on the ground that they are illegal.

The Court: That's correct, you have two grounds."

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 13,428

ROBERT WILLIAMS,

Petitioner,

v.

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, a state prisoner, has brought this application for a writ of habeas corpus claiming that the evidence used against him in his state court trial and conviction was the product of an illegal search and seizure and that he was denied the right to a speedy trial. He represents that timely motions to suppress the evidence were made, both at the preliminary hearing in the state circuit court and in the superior court, and that all state remedies on the issues raised have been exhausted. *State* v. *Williams,* 157 Conn. 114 (1968); and the Court so finds. Because of a conflict in the evidential record educed at the two aforesaid state court hearings, relating to the arresting officer's justification for making the challenged search and seizures, it was necessary that this hearing be held to ascertain the true facts. *Townsend* v. *Sain,* 372 U. S. 293, 313 (1963). Therefore, the Court appointed counsel and approved the petitioner's application to proceed in forma pauperis.

Petitioner was convicted of violating Connecticut General Statutes § 19-246, possession of narcotics, § 29-35, carrying a pistol on his person without a warrant and §-29-38, having a weapon in a vehicle. On the night of his arrest, he was seated alone in an automobile in a high crime area of Bridgeport, Connecticut at 2:15 on a Sunday morning. The arresting officer, acting on speedy information furnished by a reliable informant, that Williams had a gun in his belt and narcotics on his person, went to the car to investigate. The policeman asked him to open the door and Williams responded by rolling down the window. The officer immediately reached inside the car and removed a fully loaded pistol from Williams' waistband. He then placed Williams under arrest and conducted a further search of his person and of the automobile. This search produced several packets of a substance which later proved to be heroin taken from his person, a machete was found under the front seat of the car and a second pistol in the trunk. The conviction § 29-38, Conn. Gen. Stat., involved only his possession of the machete.

The conflict in the evidential record, which required this Court to grant a hearing, revolved around the source of the information upon which the police officer had relied in making his seizure of the first pistol. The record of the proceedings on the first motion to suppress in the state circuit court indicates that the officer was responding to some kind of a "signal" or "call" of unspecified origin. In the state superior court the testimony of the officer was that the information was transmitted to him by a person whom he met within view of the petitioner's automobile and who was known to him and considered by him to be trustworthy and reliable. This conclusion of trustworthiness was based, in part, on the fact that on at least one prior occasion this informant had supplied reliable information regarding criminal activities. Although this pre-

vious information did not lead to an arrest the officer was convinced that it was correct and that the only reason no arrest resulted was that the suspects saw the officer and ceased their criminal conduct.

At this Court's hearing the facts as they appear in the superior court record were substantiated and using them as the findings of this Court, petitioner's motion for habeas corpus is denied.

The ruling on this motion, as to the search and seizure issue, turns on the propriety of the officer's actions in reaching into the car and removing the pistol from the petitioner. The test to be applied is as follows:

> "(T)he conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures . . . .
>
> "In order to assess the reasonableness of (the officer's) conduct as a general proposition, it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.' *Camara* v. *Municipal Court*, 387 U. S. 523, 534-535, 536-537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry* v. *Ohio*, 392 U. S. 1, 20-21 (1968).

The governmental interest at work in *Terry*, and in the case at bar, is the interest of the policeman in protecting himself and others in situations where probable cause for arrest is lacking. (It appears clear on these facts that

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under § 6-49, Conn. Gen. Stat., as construed in *State* v. *Carroll,* 131 Conn. 224, providing for arrest on "speedy information" that where a crime has been or is being committed, that Williams might have been properly arrested and all searches been properly conducted incident thereto. *State* v. *Williams,* 157 Conn. 114, 118 (1968). The state, however, has not chosen to rely on this statute but rather on the "protective search" theory of *Terry* v. *Ohio, supra*).

In weighing the above need, the justification for the invasion must be considered. A mere "hunch" on the officer's part, even if in good faith, is insufficient. *Beck* v. *Ohio,* 379 U. S. 89, 96-97 (1964). Rather, the officer must be justified in believing that the person upon whom the intrusion is imposed is armed and presently dangerous to the officer or others. *Terry* v. *Ohio, supra* at 24. If such is the case "it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Id.*

In the present case such justification existed, Petitioner was alone in an automobile in the early morning hours in a high crime area. While this in itself might be sufficient to raise an alert officer's suspicions, it probably, would be insufficient to justify a search. Here, however, the officer was primarily relying on information given him by a reliable informant, who had pointed out the location of the car and its occupant within visible distance of its location. This combination of circumstances was sufficient to empower the officer to constitutionally "take necessary measures to determine" if the party to observed was armed and therefore potentially dangerous.

Once some sort of action is found to be constitutionally permissible it must next be determined ". . . the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable

cause to arrest for crime is lacking." *Terry* v. *Ohio, supra,* at 24. Thus the question is what type of search would be reasonable in the circumstances as herein presented.

> "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Terry* v. *Ohio, supra* at 29.

In *Terry* the search, which the Supreme Court upheld and which it characterized as one in which the officer "confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons," *Terry* v. *Ohio, supra* at 30, consisted of the patting down of the outer garments of the suspects and only reaching inside said garments to remove suspicious objects. In *Sibron* v. *New York,* 392 U. S. 40 (1968), a case decided the same day as was *Terry,* the Court attempted to distinguish a search where probable cause for arrest was lacking. Petitioner cites *Sibron* and quotes therefrom the following passage as supporting his position.

> "The search for weapons approved in *Terry* consisted solely of a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault. Only when he discovered such objects did the officer in *Terry* place his hands in the pockets of the men he searched. In this case, with no attempt at an initial limited exploration for arms, Patrolman Martin thrust his hand into Sibron's pocket and took from him envelopes of heroin."

Petitioner analogizes the search in *Sibron* with the officer's action here of thrusting his hand inside the automobile and

partially under his coat to remove the gun. The cause, however, are clearly distinguishable, as is apparent from the language of the Court immediately following the above quoted passage which appeared in petitioner's brief.

> "His (Patrolman Martin's) testimony shows that he was looking for narcotics, and he found them. The search was not reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man. Such a search violates the guarantee of the Fourth Amendment, which protects the sanctity of the person against unreasonable intrusions on the part of all governmental agents." *Sibron* v. *New York, supra* at 65-66.

Other distinguishing facts in *Sibron* are that the arresting officer there had no reasonable grounds to suspect that Sibron was involved in any criminal activity nor did he believe him to be armed.

The test remains, was the officer's action reasonable under all the circumstances. While the Supreme Court in both *Terry* and *Sibron* expressed approval of searches of this type consisting of a patting down of the suspect's outer clothing it did not limit its approval to that type of search. Indeed, such a search would have been impractical here. The officer's information was that Williams had a gun in the waistband of his pants. This could not have been verified by a pat-down search due to the fact that the suspect was seated in a car. In view of the darkness of the hour, rendering it impossible for the officer to see inside the car, it is too much to require that he stand beside it while its occupant, whom he had reason to believe had a gun in an easily accessible position, alights. This exposes the officer to the unreasonable risk that in the

process of getting out of the car the suspect may draw his gun and fire on him. Rather, the officer did the only thing reasonably calculated to protect himself by restricting his search to the immediate area of the suspect's person where he had reason to believe a weapon might be located. The fact that this required him to reach partially under the suspect's coat in extracting the gun does not make his actions any less reasonable in light of all the circumstances. As was the case in *Terry*, the officer here "confined his search strictly to what was minimally necessary to learn whether the (man was) armed and to disarm (him) once he discovered the (weapon)." *Terry* v. *Ohio, supra* at 30.

Once the officer found the gun and placed Williams under arrest, the remainder of his search was incident thereto. The only portion of this latter search which might be argued to have surpassed the boundaries set forth in *Chimel* v. *California*, 395 U. S. 752 (1969), was the search of the car's trunk, during which the second gun was found. This defect, if it was one, is cured by the fact that this second gun did not result in any further criminal charges. Thus, the petitioner was in no way subjected to an unreasonable search or seizure.

Petitioner also seeks release by alleging he was denied a speedy trial in contravention of the Sixth Amendment. A brief statement of the facts upon which this claim is grounded will be helpful. Williams was arrested on October 30, 1966. The next day he was presented in circuit court where the presiding judge appraised him of his constitutional rights. The case was then continued until November 3, 1966 at which time a public defender was appointed to represent him. The case was then continued until December 8, 1966 to await the state's toxicological examination on the white powder found on Williams at the time of his arrest. On December 8, 1966, he plead not guilty to all charges and various motions were made by his attorney. These motions were heard on December 22,

1966 and at that time the court found probable cause and Williams was bound over to the January, 1967 term of the superior court. On February 2, 1967, a special public defender was appointed and it was not until March 20, 1967, that he made an oral motion for a speedy trial. No other motion for a speedy trial was ever made. The trial began on April 4, 1967.

The Sixth Amendment, guaranteeing the right to a speedy trial was made applicable to the states by virtue of the Fourteenth Amendment, in *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967). Although the Sixth Amendment has only recently been applied to the states, its scope has been developed in a series of criminal cases wherein the United States was a party.

> "This guarantee is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself. However, in large measure because of the many procedural safeguards provided an accused, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself. Therefore, this Court has consistently been of the view that 'The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.' *Beavers* v. *Haubert*, 198 U. S. 77, 87. 'Whether delay in completing a prosecution . . . amounts to an unconstitutional deprivation of rights depends upon the circumstances. . . . The delay must not be purposeful

> or oppressive,' *Pollard* v. *United States*, 352 U. S. 354, 361. '(T)he essential ingredient is orderly expedition and not mere speed.' *Smith* v. *United States*, 360 U. S. 1, 10." *United States* v. *Ewell*, 383 U. S. 116, 120 (1966).

There is no substance to the claim that the state acted with other than "orderly expedition" in the prosecution of this matter. Nor has the petitioner been shown to have been prejudiced in any way by the allegedly undue delay on the part of the state. Thus, no Sixth Amendment violation is present. See *United States* v. *Simmons*, 338 F. 2d 804 (2d Cir. 1964); *United States ex rel. Von Cseh* v. *Fay*, 313 F. 2d 620 (2d Cir. 1963).

The writ of habeas corpus is denied and dismissed. So ORDERED.

The Court expresses its appreciation to Edward F. Hennessey, Esquire, of Hartford, who has so ably represented the petitioner in this proceeding, without benefit of any professional fee or remuneration.

Dated at Hartford, Connecticut, this 5th day of January, 1970.

T. EMMET CLARIE
United States District Judge

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

CASE NO. 34826 — ROBERT WILLIAMS v. ADAMS, Warden

DATE	FILINGS—PROCEEDINGS
1970	
Feb. 17	Received certain District Court papers
Feb. 24	Filed motion for certificate of probable cause with proof of service
Mar. 3	Received record (original papers of District Court)
Mar. 6	Filed motion for leave to proceed in forma pauperis and for assignment of counsel with proof of service
Mar. 9	Filed order denying motion for certificate of probable cause, etc.
Mar. 9	Filed order denying motion for leave to proceed in forma pauperis and assignment of counsel
Mar. 27	Filed motion for certificate of probable cause, etc.
Mar. 27	Filed memorandum in support of motion for certificate of probable cause, etc.
Apr. 1	Filed affidavit of service
Apr. 20	Filed order granting motion for certificate of probable cause; forma pauperis and for assignment of counsel; Edward F. Hennessey, Esq. is assigned counsel for appellant—#

Docket Entries.

Date	Filings—Proceedings
Apr. 23	Filed record (original papers of District Court)
May 8	Filed motion for copy of transcript with proof of service
May 13	Filed order denying motion for transcription of the minutes at the expense of the U.S.; appellant's dispense with appendix except that a copy of opinion below
June 1	Filed 4 copies brief, appellant with proof of service
June 24	Filed brief, appellee with proof of service
July 6	Filed 4 copies reply brief, appellant with proof of service
Sept. 29	Argument heard (by: Danaher, Friendly & Hays, CJJ)
Dec. 16	Judgment Affirmed, Danaher, CJ
Dec. 16	Dissenting in separate opinion, Friendly, CJ
Dec. 16	Filed judgment
1971	
Jan. 6	Filed motion for extension of time to file petition for rehearing with proof of service
Jan. 12	Filed order granting motion for extension of time to file petition for rehearing until 1-14-71
Jan. 14	Filed petition for rehearing and rehearing in banc with proof of service
Mar. 3	Filed order granting petition for rehearing and rehearing in banc; reconsideration to be

DATE	FILINGS—PROCEEDINGS
	had on record and the briefs heretofore filed, without further oral argument; the parties may exchange and file further briefs by 3-23-71
Mar. 22	Filed 10 copies supplemental brief, appellant with proof of service
Mar. 22	Filed order granting leave to file appellee's supplemental brief with appendix today
Mar. 22	Filed supplemental brief and appendix, appellee with proof of service
Apr. 14	Petition for Rehearing in Banc—Order of District Court Reversed, Per Curiam
Apr. 14	Hays, CJ dissenting in separate opinion
June 21	Filed notice of filing of petition for writ of certiorari

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Argued September 29, 1970 Decided December 16, 1970.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent-Appellee.

Before:

DANAHER,* FRIENDLY and HAYS,

Circuit Judges.

Appeal from denial of petition for a writ of habeas corpus after hearing before T. Emmet Clarie, *United States District Judge* for the District of Connecticut. Affirmed.

DONALD A. BROWNE, Assistant State's Attorney for Fairfield County, Connecticut (JOSEPH T. GORMLEY, JR., State's Attorney), *for Appellee.*

* Senior United States Circuit Judge of District of Columbia Circuit, sitting by designation.

EDWARD F. HENNESSEY, Esq., of Hartford, Connecticut, *for Appellant.*

DANAHER, *Senior Circuit Judge*:

Charged with carrying a pistol on his person without a permit, §29-35 of the Connecticut General Statutes, with having narcotic drugs in his control, §19-246, and having a weapon in a motor vehicle occupied by him, §29-38, appellant was convicted in the Superior Court for Fairfield County, Connecticut, after a trial to the court. His conviction was affirmed on appeal, *State v. Williams*, 157 Conn. 114, 249 A.2d 245 (1968), *cert. denied* 395 U.S. 927 (1969). Thereupon he sought habeas corpus in the United States District Court for the District of Connecticut raising claims identical with those which had been considered theretofore in the state courts. His petition alleged that the evidence used against him in his state court trial was the product of an illegal search and seizure. Additionally he claimed he had been denied a speedy trial. District Judge Clarie denied relief, and appellant now has turned to us. We affirm.

I.

After a hearing, Judge Clarie found to have been substantiated the facts set forth in the Superior Court record and relied upon by the Supreme Court of Connecticut. Compendiously restated, we may note the following here pertinent:

"At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence

of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State* v. *Williams*, *supra*, 157 Conn. at 116, 117, 249 A. 2d at 248, 249.

The Supreme Court of Connecticut decided that under the circumstances shown, the conduct of the officer was justifiable under the applicable Connecticut statutes.[1]

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1 Title 6, § 49, Connecticut General Statutes Annotated, provides in pertinent part:

"... [P]olice officers ... in their respective precincts, *shall arrest*, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the *speedy information of others*, and members ...

Thus the arrest which followed was fully sustainable quite aside from any authority given the officer by §6-49; his action was reasonable for he had not conducted a general exploratory search, he had merely grabbed the loaded revolver from the place where his informant had said it would be. In reliance upon *Terry* v. *Ohio*, 392 U.S. 1 (1968), the Court found that the course taken by the officer was far less extensive than that found reasonable in *Terry*.

II.

That the findings and conclusions of the Connecticut courts were not insulated from examination by Judge Clarie is obvious. *Ker* v. *California*, 374 U.S. 23, 34 (1963). Granting that the law of the state where the arrest without warrant took place determines its validity, *United States* v. *Di Re*, 332 U.S. 581, 589, *United States* v. *Viale*, 312 F.2d 595, 599 (2 Cir. 1963), we take account of the federal constitutional standard in appraising the issue here. Williams was arrested for illegal possession of

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of an organized local police department . . . shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority." (Emphasis added.)

The Connecticut courts have construed the statute to require that an officer "shall" arrest on the "speedy information of others," and so as an Act passed primarily to guide officers in the performance of their duties. *State* v. *Adinolfi*, 157 Conn. 222, 226, 253 A.2d 34 (1968); *Sims* v. *Smith*, 115 Conn. 279, 161 A. 239 (1932); *McKenna* v. *Whipple*, 97 Conn. 695, 701, 118 A. 40 (1922); *Price* v. *Tehan*, 84 Conn. 164, 167, 79 A. 68 (1911); and see *United States* v. *Traceski*, 271 F. Supp. 883, 885 (D. Conn. 1967).

Indeed, as bearing upon an officer's reliance upon speedy information, §53-168 provides punishment by fine or imprisonment or both for any person who knowingly makes to a police officer a false report or false complaint that a crime has been or is being committed.

a revolver. If that arrest were lawful, evidence secured as an incident thereto might properly be received. Were the facts and circumstances within the knowledge of the officer and of which he had reasonably trustworthy information sufficient to warrant a man of reasonable caution in the belief that an offense was being committed? The answer to that question determines the present issue. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949); *United States v. Traeski*, 271 F. Supp. 883, 885 (D. Conn. 1967); *cf. United States v. Rose*, 418 F.2d 38, 39 n. 2 (2 Cir. 1969), *cert. denied*, 397 U.S. 998 (1970).

Inevitably, issues such as ours must be resolved upon the particular facts which vary from case to case. See, e.g., the discussion by Circuit Judge (now Justice) Blackmun in *Rodgers v. United States*, 362 F.2d 358, 362 (8 Cir. 1966), followed in *Kauser v. United States*, 394 F.2d 601, 605 (8 Cir.), *cert. denied*, 393 U.S. 919 (1968); *cf. Smith v. United States*, 358 F.2d 833, 835 (D.C. Cir. 1966) (Opinion by Circuit Judge, now Chief Justice, Burger).

So it is that our appellant relies upon *Sibron v. New York*, 392 U.S. 40 (1968), even as he would discount the companion case involving *Peters*, 392 U.S. at 66, and would reject the reasoning of *Terry v. Ohio*, 392 U.S. 1 (1968). The Court itself spelled out a distinction in *Chimel v. California*, 395 U.S. 752, 762 (1969). Where *Terry* had held that the scope of the search must be strictly tied to and justified by the circumstances involving a protective search for weapons, in *Sibron* the policeman had not been motivated by or his action limited to the objective of protection. On the contrary, *Chimel* explained, the officer had put his hand into the suspect's pocket with the purpose of finding narcotics which indeed were found.

In our case, the officer testified that he reached for the gun in concern for his own protection, and "I didn't want him to use the pistol on me, sir."

Chimel made clear that

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." 394 U.S. 752, 762-763.

So, we turn back, once again, to the circumstances under which the arrest occurred.

Here the officer received a complaint from an informant who was known to him, considered by the officer to be trustworthy and reliable, and one who in the past, as Judge Clarie found, had supplied valuable information regarding criminal activities. Cf. *United States* v. *Gazard Colon*, 419

F.2d 120, 122 (2 Cir. 1969). At once let it be noted additionally, that this was not the usual "informant" detailing aspects of some earlier action. He described current circumstances there and then constituting a felony under Connecticut law.

This was an eye-witness, invested with "built-in credibility." *McCreary* v. *Sigler*, 406 F.2d 1264, 1269 (8 Cir.), *cert. denied*, 395 U.S. 984 (1969); cf. *United States* v. *Acarino*, 408 F.2d 512, 514 (2 Cir.), *cert. denied*, 395 U.S. 961 (1969). He pointed out to the officer that there was at that very time a car parked across the street, there was a person seated in that vehicle; that person was armed; that he had a pistol at his waist and had narcotics in his possession.

Since this was a Bridgeport police sergeant, it is not unreasonable to infer he was experienced. Patrolling alone in an area noted for its high incidence of crimes of various kinds, he received the complaint that a crime was then in progress. Guided by Connecticut law, he was bound to act on the speedy information then at hand. *Supra* n. 1, and compare *Jackson* v. *United States*, 408 F.2d 1165, 1169 (8 Cir.), *cert. denied*, 396 U.S. 862 (1969). He crossed the street, saw the appellant in the car, and could readily check personally on the facts made available to him. Then he told that person to open the car door. Instead, the latter rolled down the window. The gun was at the appellant's waist just as the witness had described, and the officer seized a fully-loaded pistol. He thereupon arrested Williams.

That Williams, unlike *Terry*, was seated in a car is immaterial under the circumstances here. In determining whether the officer as a reasonably prudent man in the

circumstances acted reasonably in the belief that his safety might be in danger, we can not fail to give due weight to the specific reasonable inferences which he was entitled to draw from the facts in light of his experience. Swift measures were required that the exact facts might be determined and that the threat of harm be neutralized. The protection of the police officer required no less.[2]

Consequent upon the arrest, immediate search disclosed that Williams had a machete at his feet under the seat of the car. The intrusion, in short, was "reasonably designed" to discover, not only the pistol, but "other hidden instruments for the assault of the police officer." *Terry* v. *Ohio*, 392 U.S. 1, 29 (1968).

We may properly conclude here with Chief Justice Warren that:

> ". . . We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a

2. Mr. Justice Black has emphasized that the test in such situations, in last analysis, turns upon "reasonableness." *Preston* v. *United States*, 376 U.S. 364, 367 (1964). He is not alone in that view. Another noted jurist has observed:

> It does not seem consistent with the objective of deterrence that the maximum penalty of exclusion should be enforced for an error of judgment by a policeman, necessarily formed on the spot and without a set of *United States Reports* in his hands, which is not apparent years later to several Justices of the Supreme Court. At least in cases of this sort, where, in contrast to confessions of dubious reliability, the evidence cannot impair any proper defense on the merits, the object of deterrence would be sufficiently achieved if the police were denied the fruit of activity intentionally or flagrantly illegal – where there was no reasonable cause to believe there was reasonable cause.
>
> H. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 California Law Review, 929, 952 (October, 1965).

weapon that could unexpectedly and fatally be used against him." *Terry* v. *Ohio*, *supra*, at 23.

We agree with the Connecticut Supreme Court and with the District Judge that here the arrest of Williams was valid.[3] The search incident to the arrest accordingly was lawful and the weapons and the narcotics were correctly received in evidence against Williams.

III.

Appellant contends that he had been denied a speedy trial. Following appellant's arrest on October 30, 1966, there were various pre-trial motions after which the appellant was bound over from the lower court to the Superior Court. On March 20, 1967 appellant's counsel, for the first time, made an oral motion for early trial. The case was at once assigned for trial on April 4, 1967, and following trial, the judgment appealed from was rendered on April 28, 1967. We find no merit in this contention.[4]

IV.

Appellant's argument concerning nondisclosure of the "informant" must fall. He developed no compliance with criteria such as had been set forth in *Roviaro* v. *United States*, 353 U.S. 53, 61 (1957). There was no indication of

3 See, generally, *United States* v. *Thompson*, 420 F.2d 536, 540-541 (3 Cir. 1970); *Klingler* v. *United States*, 409 F.2d 299, 302-307 (8 Cir.), *cert. denied*, 396 U.S. 859 (1969); *cf. Chambers* v. *Maroney*, 399 U.S. 42, 51 (1970) and *United States* v. *Gorman*, 355 F.2d 151, 154-155 (2 Cir. 1965).

4 *United States* v. *DeLeo*, 422 F.2d 487, 493, 496 (1 Cir.), *cert. denied*, 397 U.S. 1037 (1970); *United States ex rel. Solomon* v. *Mancusi*, 412 F.2d 88 (2 Cir.), *cert. denied*, 396 U.S. 936 (1969); *United States* v. *Maxwell*, 383 F.2d 437, 441 (2 Cir. 1967) and *United States* v. *Fay*, 313 F.2d 620, 623 (2 Cir. 1963).

how the informant's testimony could help establish this appellant's innocence. *Rugendorf v. United States*, 376 U.S. 528, 535 (1964). The Court has never "approached the formulation of a federal evidentiary rule of compulsory disclosure where the issue is the primary one of probable cause, and guilt or innocence is not at stake." *McCray v. Illinois*, 386 U.S. 300, 308-311 (1967). Surely there is no absolute rule in any event as to these situations, and under the circumstances of this case, no error has been made to appear.

Affirmed.*

FRIENDLY, *Circuit Judge* (dissenting):

As this case was argued both in the district court and on appeal, Connecticut sought to validate the police sergeant's actions solely on the basis of "stop and frisk." Eschewing the argument that Officer Connolly had probable cause for arrest, it contended that he did have enough cause to make it reasonable to demand that Williams open the door of the car.[1] Once that proposition was established, the State's argument continued, quite logically, as follows:

(1) Since leaving Williams in the car without immediate removal of the gun would have exposed the officer to danger, he was justified in reaching into Williams' waistband and taking the gun without attempting to "pat," a course impracticable under the circumstances;

(2) Having found the gun, the officer had reasonable grounds for arresting Williams, since persons reputedly

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* The Court is indebted to Edward F. Hennessey, Esquire, of Hartford who without remuneration has so earnestly and diligently represented the appellant.

1 The State does not contend that Williams' action was voluntary.

engaged in the narcotics traffic do not ordinarily have gun permits; and

(3) Since the arrest was thus valid, the search was reasonable, at least under pre-*Chimel* law.

My difficulty was, and is, not with these three steps but with the premise underlying them, namely, that Officer Connolly had "constitutional grounds to insist on an encounter, to make a *forcible* stop," *Terry* v. *Ohio*, 392 U.S. 1, 32 (concurring opinion of Harlan, *J.*).[2]

As I read my brother Danaher's opinion, he believes that when Connolly approached Williams' car, the officer had sufficient cause not simply for a stop but for an arrest. I cannot agree. The officer's own observation—nothing more than seeing a man sitting alone in a car at 2:15 A.M. in a "high-crime" area—fell far short of what the Court held insufficient in *Henry* v. *United States*, 361 U.S. 98 (1959), which also involved the arrest of occupants of an automobile. Almost everything must therefore turn on what the unnamed informer said, and the value of his statement does not approach the requirements laid down in the three Supreme Court decisions which establish the constitutional parameters in this area. These are *Draper* v. *United States*, 358 U.S. 307 (1959), where the combination of information and observation was held sufficient for a warrantless arrest, and *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969), where affidavits for search warrants were held insufficient. In contrast to the

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2 It seems clear that this is the threshold issue. I do not read the Chief Justice's opinion as holding otherwise, although, as Mr. Justice Harlan indicated, 392 U.S. at 32, the thought may not have been "fully expressed." If the initial intrusion is justified, the privilege of the officer to take reasonable steps believed in good faith to be necessary for his own safety scarcely requires argument.

named informer in *Draper*,[3] a "special employee" of the Narcotics Bureau who had given reliable information about narcotics for six months, the only basis for Officer Connolly's belief in the unnamed informer here was that on one prior occasion the latter had given information about homosexual activity at the Bridgeport Railroad Station, which, however, was never substantiated and did not lead to an arrest. While the officer's explanation that the suspect in the station desisted because he saw the police coming may be reasonable enough, the episode, even if it had turned out more successfully for the police, would scarcely establish the informer as an authority on narcotics or guns. In addition, the informer in *Draper* had provided a detailed description of the scenario which the suspect later performed, thus making the report one that, in the language of *Spinelli*, 393 U.S. at 417-18, "was of the sort which in common experience may be recognized as having been obtained in a reliable way." By contrast, the informer here, assuming he existed,[4] related a single fact with no indication of how he had come upon it. The inarticulate premise for the reliability of this scant information, namely, that no one could have stated such a fact unless he had personally observed it, is precisely the view that *Aguilar*, 378 U.S. at 113-14, and *Spinelli*, 393 U.S. at 416-17, rejected. It is as true here as in *Spinelli*, 393 U.S. at 417, that "this meagre report could easily have been obtained from an off-hand remark heard at a neighborhood bar,"[5] and there

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3 Named doubtless because he had died within a few days after the arrest.

4 It is cause for no small wonder that on the first suppression hearing, Officer Connolly never mentioned the informer but said he had responded to a police signal. In the subsequent hearing the informer appeared and the signal disappeared. See note 9 *infra*.

5 The majority opinion urges against this that because the alleged informant was allegedly across the street, he should be regarded as

was less, in fact nothing, in the way of meaningful corroboration by police investigation before the intrusion. I therefore turn to what I regard as the serious and doubtful issue whether, despite the absence of probable cause for arrest, Officer Connolly was nonetheless justified under *Terry* v. *Ohio, supra,* 392 U.S. 1, in demanding that Williams open the door of the car.

It has been well said that *Terry* and the two other cases decided with it, *Sibron* v. *New York* and *Peters* v. *New York,* 392 U.S. 4 (1968), constitute "the Court's first word —but certainly not its last—on the subject of stop and frisk . . . . [T]his was the Court's first foray into this particular thicket, and it is thus understandable that it made a conscious effort to leave sufficient room for later movement in almost any direction." La Fave, "Street Encounters" and the Constitution, 67 Mich. L. Rev. 39, 46 (1968). Of the three decisions, only in *Terry* did a majority of the Court sustain a stop and protective search where there had been less than probable cause for arrest.[6] The Chief Justice was at pains to make clear the limited character of the holding, when he said in the concluding paragraph of his opinion, 392 U.S. at 30-31: "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience

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an "eye-witness" and cites *McCreary* v. *Sigler,* 406 F.2d 1264, 1269 (8 Cir. 1969), and *United States* v. *Acarino,* 408 F.2d 512, 514 (2 Cir.), *cert. denied,* 395 U.S. 961 (1969), in support. In *McCreary,* the informant gave a detailed affidavit of his observations including the fact that he had seen McCreary in the phone booth whence the coin box was stolen and heard coins rattling. In *Acarino* the informer had given a detailed scenario à la *Draper.* Here the implicit assumption that the informer had been with Williams in the car or saw him enter it is sheer speculation.

6 The search in *Sibron* was held unlawful because the officer was seeking to find narcotics rather than to protect his own safety; in *Peters* the majority found there was probable cause for arrest.

that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous;" he may make a stop and conduct a protective search under the conditions there defined.

The instant case differs from *Terry* in important respects. Officer Connolly himself observed no "unusual conduct" leading him "reasonably to conclude . . . that criminal activity may be afoot"—unless we are to say that the mere fact of Williams' sitting alone in an automobile at 2:15 A.M. in a "high-crime" area is so inherently suspicious as to justify such a conclusion—a view I would deem exceedingly dangerous. The officer's only basis for believing that Williams may have been committing a crime was the alleged tip from the not proved to be reliable, unnamed informer. See 19 Buffalo L. Rev. 680, 685-86 (1970). Moreover, what Officer McFadden saw in *Terry* was "unusual conduct" giving reason to believe that armed robbery was about to be committed; swift intervention on his part was required to prevent a serious crime of violence. Here, while Officer Connolly could well have thought that Williams would not possess the gun and narcotics mentioned by the informer merely for pleasure, he could not have believed that sale of the narcotics or use of the gun was imminent, and the record suggests that the officer had ample means for placing Williams under surveillance. See, in this connection, Mr. Justice Harlan's concurring opinion in *Sibron*, 392 U.S. at 73.

The question thus becomes whether, even though the decisions of the Supreme Court of Connecticut and the district court in this case go beyond the facts of *Terry* and the narrow statement of its holding, they are nevertheless within its rationale. This seems to lie in the passages, 392 U.S. at 26-27, where the Chief Justice explained

that, in contrast to an arrest, "the protective search for weapons . . . constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person"; that, because of the lesser nature of the intrusion, a smaller showing of cause may suffice; and that Terry's "reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced." A further signal that the Court was thus adopting a test balancing the amount of cause required to be shown against the extent of the particular invasion of personal security was given by the citation of *Camera* v. *Municipal Court*, 387 U.S. 523, 534-37 (1967). See LaFave, *supra*, 67 Mich. L. Rev. at 54-56; Hall, Kamisar, LaFave and Israel, Modern Criminal Procedure 324-26 (1969).

The Court's decision that less may be required to justify a stop and a protective search than an arrest and a search incidental thereto leaves many open questions. How much less is enough? Does something depend upon the seriousness of the offense? Cf. *Brinegar* v. *United States*, 338 U.S. 160, 183 (1949) (dissenting opinion of Mr. Justice Jackson). What favor, if any, should be shown to intervention aimed at preventing crime rather than detecting it? Cf. LaFave, *supra*, 67 Mich. L. Rev. at 66; 82 Harv. L. Rev. 178, 182 (1968). Do not such factors enter into an appraisal of what the Court evidently regarded as one significant test—whether failure to take immediate action

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7 As said in LaFave, *supra*, 67 Mich. L. Rev. at 57:

> Taking into account the seriousness of the offense does not require the use of some fine-spun theory whereby each offense in the criminal code has its own probable-cause standard; rather, it involves only the common-sense notion that murder, rape, armed robbery, and the like call for a somewhat different police response than, say, gambling, prostitution, or possession of narcotics.

would be "poor police work"? 392 U.S. at 23. While almost everyone would agree it would have been "poor police work" for Officer McFadden to have failed to take action to foil an armed robbery by Terry and his confederates, many would think Officer Connolly would have done well enough to report what he allegedly had been told and the little he had seen.

Only future decisions by the Supreme Court can answer these and other questions. Striking the balance here as best I can in light of the few guidelines thus far available, I would hold the State had not shown sufficient cause to justify a forcible stop:

To begin, I have the gravest hesitancy in extending *Terry* to crimes like the possession of narcotics, see LaFave, *supra*, 67 Mich. L. Rev. at 65-66. There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true. Against that we have here the added fact of the report that Williams had a gun on his person. I would follow Mr. Justice Harlan in thinking that "if the State . . . were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, . . . action taken pursuant to such authority could be constitutionally reasonable." *Terry* v. *Ohio*, *supra*, 392 U.S. at 31. But, as in *Terry*, the State here has done nothing of the sort. Connecticut allows its citizens to carry weapons, concealed or otherwise, at will, provided only they have a permit, Conn. Gen. Stat. §§29-35 and 29-38, and gives its police officers no special authority to stop for the purpose of determining whether the citizen has one. Indeed, as my analysis of the State's argument shows, the narcotics and

the gun are inseparably linked; it is the report about narcotics on which the State pins reasonable cause to arrest for illegal possession of a gun.

If I am wrong in thinking that *Terry* should not be applied at all to mere possessory offenses, and a dictum in *Sibron*, 392 U.S. at 63, indicates that I may be, I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a threefold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former. Narcotics Agent Marsh would hardly have been at the Denver Station at the exact moment of the arrival of the train Draper had taken from Chicago unless *someone* had told him *something* important, although the agent might later have embroidered the details to fit the observed facts. Cf. *United States* v. *Comissiong*, 429 F.2d 834 (2 Cir. 1970). There is no such guarantee of a patrolling officer's veracity when he testifies to a "tip" from an unnamed informer saying no more than that the officer will find a gun and narcotics on a man across the street,[8] as he later does. If the state wishes to rely on a tip of that

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8 While the findings of the Connecticut courts and the district court preclude our holding that the unnamed informer did not exist in this case, we can take the danger of fabrication into account in framing a general rule.

nature to validate a stop and frisk, revelation of the name of the informer or demonstration that his name is unknown and could not reasonably have been ascertained should be the price.[9]

Terry v. *Ohio* was intended to free a police officer from the rigidity of a rule that would prevent his doing anything to a man reasonably suspected of being about to commit or having just committed a crime of violence, no matter how grave the problem or impelling the need for swift action, unless the officer had what a court would later determine to be probable cause for arrest. It was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessory offenses. If it is to be extended to the latter at all, this should be only where observation by the officer himself or well authenticated information shows "that criminal activity may be afoot."

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9 The State's claim that Williams failed previously to raise this point is without foundation. At the first hearing on Williams' motion to suppress evidence, Officer Connolly testified he was in a radio car and responded to a police signal directing him to go to the Williams car. No mention of an informant was made at that time. After Williams was bound over to the Fairfield County Superior Court, a second hearing was held and the officer testified that while on patrol he met an undisclosed informant who told him that Williams was in the car with drugs and a gun. Williams' attorney asked who the informant was, but the state objected, the court sustained the objection, and Williams' attorney took an exception. Again, in his amended and second amended petitions for habeas corpus presented to the Superior Court for Hartford County, Williams claimed his conviction was illegal since his "right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed." Finally, in the Claims of Law which Williams submitted to support his federal habeas corpus petition, he mentioned that he had sought to elicit the identity of the informant but was not permitted to do so; he alleges also that at the federal habeas hearing the judge sustained an objection to questions on the informant's identity.

392 U.S. at 30. I greatly fear that if the decision here should be followed, *Terry* will have opened the sluice-gates for serious and unintended erosion of the protection of the Fourth Amendment.

I would grant the writ.

Petition for Rehearing.

POINTS OF LAW AND FACT FOR RECONSIDERATION

The petitioner submits that this decision especially in light of the facts cited in the dissent presents the following questions for reconsideration:

1. Does a tip to a police officer from an undisclosed informant that a man is seated in a car with drugs and a gun provide reasonable grounds to conduct a stop-and-frisk where there is no credible evidence offered to show either that the informant was reliable or that the informant's tip resulted from personal observation or from some other reliable source?

2. Does the decision in *Terry* v. *Ohio*, 392 U.S. 1 (1968) permit a stop-and-frisk where there is no showing that the officer either observed conduct or possessed other credible information to show that the suspect presented an immediate threat of danger to the officer or to the public?

3. Does the majority holding in this case constitute an undue extension of the doctrine of *Terry* v. *Ohio*, *supra*, by permitting a stop-and-frisk in any instance where an officer has reason to believe a person is armed?

   a. Does the same conclusion apply even if, by State law, a citizen is permitted to carry concealed weapons?

4. Does the majority holding that the undisclosed informant was reliable conflict with the standards of proof to establish reliability as set forth in *Spinelli* v. *United States*, 393 U.S. 410 (1969) and *Aguilar* v. *Texas*, 378 U.S. 108 (1964)?

   a. Is proof that an undisclosed informant gave six prior uncorroborated tip concerning homosexual ac-

tivity sufficient to establish the informant's reliability with respect to crimes involving possession of drugs or guns?

5. Does the majority holding that the overall evidence established that the tip from the informant had a reliable basis in fact also conflict with the standards of proof set forth in *Spinelli* v. *United States, supra,* and *Aguilar* v. *Texas supra*?

a. Does the statement, "There's a man in that car with a gun at his waist and drugs," supply a sufficient foundation for a police officer to conclude that this tip is based upon the informant's own observation or other reliable information, if the car is in sight and the suspect visible when the information is given?

Based upon the conclusions of fact and law reached in the majority holding the petitioner submits that all these questions would be answered in the affirmative. However, the petitioner urges that based upon present decisional law of the United States Supreme Court, each of these questions should properly be answered in the negative. For this reason he urges the Court to reconsider this decision in light of these questions and the implication of affirmative answers to them.

Argument

The petitioner believes that a rehearing in this case would be warranted. The Petitioner also suggests the possibility that a rehearing en banc might be appropriate.

Without desiring to appear presumptuous the petitioner feels that the majority view represents a significant departure from the narrow concept of stop-and-frisk as it was articulated in *Terry* v. *Ohio,* 392 U.S. 1 (1968). The

scope of this departure is made clear in the dissenting opinion.

The concept of stop-and-frisk itself represented a substantial move away from the traditional view that probable cause was necessary in order to permit a police intrusion upon one's person or property. This doctrine recognized a need for limited intrusions under exigent circumstances. Those exigent circumstances only existed when there was reasonable cause on the part of a police officer to believe that an individual was armed and dangerous. The rationale of this rule is understandable notwithstanding the fact that it opened the door to invasions of privacy not heretofore authorized by the Supreme Court. However, there is in this country a marked difference between being armed and being armed and dangerous. Petitioner cannot speak for all the States in the Union, but he can state that it is perfectly permissible in Connecticut, where this incident occurred, to carry concealed weapons on one's person or in one's car, provided only that proper licensing or registration has taken place. Conn. Gen. Stats. §§ 29-35, 29-38. The wisdom of having our citizenry walking our streets with pistols at their waists is not, of course, at issue. However, the right of the police to stop-and-frisk these citizens is at issue. Further, the use of the disclosure of this concealed gun as a basis for an arrest and a general exploratory search is also at issue, since this is what in fact occurred in this instance.

The petitioner, therefore, submits that this case presents a crucial question as to when the right to stop-and-frisk arises.

The petitioner submits that the majority would allow a stop-and-frisk whenever there is reasonable grounds to believe the suspect is armed. The petitioner, however, believes that the Supreme Court did not so hold in *Terry* v. *Ohio, supra.* The petitioner further submits that by ignoring the requirement that the officer have reasonable grounds

to believe that the suspect is dangerous, it extended the law of stop-and-frisk beyond any rule of law either stated in or suggested by *Terry* v. *Ohio, supra,* and *Sibron* v. *New York,* 392 U.S. 40 (1968).

The second issue which presents a question of some moment is the question of what constitutes sufficient proof of reasonable grounds to conduct a stop-and-frisk. In the majority opinion the Court concluded that the informant who furnished the tip was reliable and that the information furnished was reliable. The dissent, however, concluded that neither of these criteria were met. Since the evidence in this case is essentially undisputed it seems that a future reader of this decision could conclude that by its decision the Second Circuit held:

1. A reliable informant is any person who ever gave a police officer any information in the past, if the officer personally believed that that past information was true, notwithstanding his inability to substantiate it.

2. It is unnecessary for the officer to determine that the information given by the informant resulted from personal observation or from some other reliable source if the suspect is visible to the officer at the time it is given.

These two conclusions it is submitted conflict with the requirements set forth in *Spinelli* v. *United States,* 393 U.S. 410 (1969) and *Aguilar* v. *Texas,* 378 U.S. 108 (1964), for establishing probable cause to arrest based on the information of an undisclosed informant.

Further if, as the petitioner submits, and, if, as the dissent appears to hold, the evidence in fact was insufficient to satisfy either test of reliability as spelled out in *Spinelli* v. *United States, supra,* and *Aguilar* v. *Texas, supra,* then the final question to be resolved is whether the tip of an unreliable informant is a sufficient basis to establish reasonable grounds to conduct a stop-and-frisk.

Referring again to *Terry* v. *Ohio, supra,* and *Sibron* v. *New York, supra,* the petitioner submits that it is not. The decisional law to date seems to require more. In particular the *Terry* case seems to suggest that the exigencies which justify stop-and-frisk arise from conduct which suggests to the trained officer that danger is imminent.

The petitioner submits that a tip alone without any observable conduct on the part of the suspect suggesting present or contemplated dangerous activity falls short of the quantum of proof necessary to justify any interference with his liberty or intrusion upon his person.

For these reasons the petitioner submits that the implications of this case carry it far beyond present Supreme Court decisions in the fields both of stop-and-frisk and of probable cause based upon undisclosed informants. And because of this petitioner requests that the matter be reheard and suggests also that it might be an appropriate case for review by the Court en banc.

ROBERT WILLIAMS
Petitioner-Appellant

By: EDWARD F. HENNESSEY
His Attorney
Edward F. Hennessey
799 Main Street
Hartford, Connecticut 06103

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Rehearing *in banc* ordered March 3, 1971

Decided April 14, 1971.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Respondent-Appellee.

Before:

LUMBARD, *Chief Judge,*
FRIENDLY, SMITH, KAUFMAN, HAYS,
ANDERSON and FEINBERG, *Circuit Judges.*

PER CURIAM:

Upon application by petitioner, a majority of the active members of this court voted to reconsider *in banc* the decision of the panel in this case on the record and briefs originally filed, without further oral argument. Both parties were invited to file supplemental briefs, and both have done so. Upon reconsideration, we conclude that on the basis of the facts then known to him, Sergeant Connolly had neither probable cause to arrest Williams nor any

other sufficient cause for reaching into Williams's waistband, an action which led to the subsequent search of Williams's car and the discovery of a machete and narcotics later introduced in evidence at Williams's trial. See *Terry* v. *Ohio*, 392 U.S. 1 (1969); *Spinelli* v. *United States*, 303 U.S. 410 (1969); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Henry* v. *United States*, 361 U.S. 98 (1959); *Draper* v. *United States*, 358 U.S. 307 (1959). Since those illegally seized items should have been excluded from evidence, Williams's conviction must be set aside. Accordingly, we reverse the order of the district court denying Williams's petition for a writ of habeas corpus.

HAYS, *Circuit Judge* (dissenting):

The facts of this case were as follows:

> "At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested

> the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State* v. *Williams*, 157 Conn. 114, 116-17 (1968); cert. denied, 395 U.S. 927 (1969).

In *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949), the Court said:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

A familiar way of testing the "factual and practical considerations of everyday life" is to ascertain what practical everyday people would do in the given factual circumstances. I would suppose that very close to one hundred per cent of the people of this country, if they were asked whether in the situation in which he found himself, the Bridgeport police sergeant's actions were those of a reasonable and prudent man, would unhesitatingly reply in the affirmative. If the police officer had disregarded the information that a man sitting alone in a car in a high crime area at 2:15 in the morning had a gun stuck in his belt, his conduct, far from being reasonable and prudent, would have been bizarre and erratic.

An "exclusionary rule" which deters police officers from taking ordinary precautions against criminal conduct and encourages possession of guns, machetes and narcotics, is surely an unacceptable rule.

Order of the Supreme Court Granting Certiorari.

SUPREME COURT OF THE UNITED STATES

No. 70-283, October Term, 1971

FREDERICK E. ADAMS,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

ORDER OF THE SUPREME COURT GRANTING CERTIORARI—Filed January 10, 1972

"The motion of the respondent for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted."

Testimony in Fairfield County, Superior Court Case No. 16,746, Motion to Suppress.

* * * * * *

(5) JOHN CONNOLLY, having been called as a witness, was duly sworn, and testified upon his oath as follows:

The Clerk: State your name, please.
The Witness: Sgt. John Connolly.
The Clerk: Spell your last name for the Court, please.
The Witness: C-o-n-n-o-l-l-y.
The Clerk: And your address?
The Witness: 75 Success Avenue, Bridgeport.
The Clerk: You may be seated, sir.

Direct Examination by Mr. Browne:

Q. What is your occupation, please? A. Police Sergeant, City of Bridgeport Police Department.

Q. And for how long have you been associated with the Bridgeport Police? A. This is my 20th year.

Q. Whether or not you were on duty as a Bridgeport Police Officer on the evening of October 30, 1966? A. Yes, sir.

Q. Had you also been on duty on the preceding evening, the evening of the 29th and morning of October 30th? A. Yes, sir.

Q. And was that the date that you had occasion to see the accused in this case, Robert Williams? A. Yes, sir.

Q. Do you recall, Officer, yourself, whether it was the (6) morning of October 30th or the 31st? A. The morning of October 30th.

Q. And what shift were you working that day, Officer? A. It is referred to as the midnight shift.

Q. And what hours does that encompass? A. From twelve midnight to eight a.m.

Q. And how were you on duty? Were you on foot patrol? A. No, I was on Radio Car Patrol.

Q. And were you alone or was there someone with you? A. I was alone.

Q. Now, during your tour of duty, did you have a conversation with anyone relevant to a person being in an automobile, a particular automobile? A. I did, sir.

Q. And at approximately what time was that conversation held? A. Approximately at 2:15 a.m. on the 30th.

Q. And this person that you spoke with, had you known him or her before? A. I had.

Q. And had you on other occasions obtained information from this particular person?

Mr. Green: I have to object to the question as leading, your Honor?

The Court: Objection overruled.

Mr. Green: May I have an exception

The Court: You may have an exception.

(7) A. I had.

Q. Had that information been correct that you had received previously? A. It had.

Q. Now, where did this conversation take place? A. In the gasoline service station at Hamilton and East Main Street, Bridgeport, in the parking area adjacent to the service station.

Q. And as best you recall it, just exactly what did this particular person say? A. I was advised that the person sitting in the car nearby had a revolver on his person at his waist and that he also had narcotics on his person.

Q. And was one particular car pointed out to you as being the car in which this person was? A. Yes, it was, sir.

Q. And where was that car located? A. It was parked on the north side of Hamilton Street facing East Main

Street about two car lengths west of the intersection of Hamilton and Green Street.

Q. Incidentally, Officer, are you familiar with this particular neighborhood? A. I am.

Q. And for how long have you done police duty in that particular area or neighborhood? A. Well, at various intervals during my police service, possibly a total of six years.

(8) Q. All right. And can you describe what type of a neighborhood it is? A. It is a neighborhood with a high incident of crime of various kinds.

Q. Did you proceed to this car that had been pointed out to you? A. I did, sir.

Q. And how did you get there? A. Walked, sir.

Q. And was in fact an occupant in the car? A. Yes.

Q. And where was this occupant seated? A. On the passenger's side of the front seat.

Q. And what did you do at the car? A. I tapped on the window and advised the occupant to open the door.

Q. And what happened? What did he do? A. He rolled down the window.

Q. And what did you do at that time? A. I reached in and removed a revolver from the waistband of his trousers.

Q. Had you seen this revolver before you reached in and took it? A. No, sir.

Q. That was where the person had told you the revolver was located. A. Yes, sir.

(9) Q. Were you in concern for your own protection at that time? A. Yes, sir.

Q. You were alone. A. Yes, sir.

Q. And this was about 2:30. A. About 2:20.

Q. 2:20. A. Yes.

Q. Now, the person whom you removed the revolver from, who is he, sir? A. Robert Williams.

Q. That is the accused in this case. A. The accused.

Q. Seated at the counsel table. A. Yes.

Q. And was he subsequently searched further? A. Yes, sir.

Q. And do you know what else was found in his possession at that time? A. Substances which were later identified as narcotics.

Q. And where were they? A. He had some in his coat pocket, right-hand coat pocket, and some in his wallet.

Q. Now, at any time, did you actually tell Mr. Williams that he was under arrest? A. When I found the revolver, I advised him he was under (10) arrest.

Q. And then you proceeded to search him further. A. Yes, sir.

Q. And at any time prior to advising him that he was under arrest, had you done any type of a search of his pockets or any of his clothes? A. No, sir.

Q. So that, you made no search of his person other than to remove this gun prior to his arrest. A. I removed the gun. I didn't make any search.

Mr. Browne: You may inquire.

Cross Examination By Mr. Green:

Q. Sgt. Connolly, have you been assigned to duty in this area over a period of months? A. Yes, sir.

Q. And you are well familiar with it and the people in it. Is that right? A. Yes, sir.

Q. And I believe you described it as an area that has a high incidence of crime. A. That's right, sir.

Q. Now, on the night in question, you spoke to somebody about this automobile. A. Yes, sir.

Q. And would you tell the Court exactly what this person told you? A. That there was a man sitting in a car with

a gun on (11) his person at his waistband, and that this man also had drugs.

Q. And is that the full limit of what you were told at that time? A. To the best of my recollection.

Q. Now, search you recollection carefully, Sergeant. I have your words: "There was a man sitting in a car, and that he had drugs on his person." A. "That car over there would be it."

Q. Now, this was told you where? A. In the yard of gas station at the corner of Hamilton and East Main Street.

Q. Now, which corner is it on, Sergeant? A. It's on the southeast corner.

Q. On the southeast corner. A. Yes.

Q. And the yard is where, close to Hamilton Street or on East Main Street? A. It covers the entire southeast corner.

Q. Tell us exactly where you were standing when you were talking to this person? A. Approximately in the center of the quarter section that would be best identified as that portion of the gas station yard as the northeast section, I feel.

Q. All right. Now, the person said, "There is a man sitting in a car down there." Is that right? A. "That car over there."

Q. Well, was the car visible from where you were stand-
(12) ing A. Yes.

Q. And what kind of a car was it? A. 1958 Plymouth, two door hardtop, color tan.

Q. And your car was parked where? A. In the gas station yard near the gas station itself.

Q. So, you then proceeded down the street, and you saw the accused sitting in the automobile. A. It was more proceeding diagonally across the yard and the street.

Q. So, from where the informant was speaking to you, you could observe the accused. A. Yes, sir.

Q. You went over there. And did you have a pistol drawn? A. No, sir.

Q. You started talking to him, asked him to open the door, I think you said. A. Yes, I told him, "Open the door."

Q. And at that point then, he rolled the window down. A. That's right, sir.

Q. And you felt behind him in the waistband. A. No, across his front.

Q. You felt across his front. A. I didn't feel. I reached in and took the revolver that was there.

Q. And when you got the revolver, you found that the information which you had been given was true, and you arrested (13) him. A. That's right, sir.

Q. And your discovery of the heroin wasn't made until later. A. That's right.

Q. And actually you didn't search the car until later. A. Well, a short time later.

Q. Other policemen came to the scene. A. Yes, that's when the search was made.

Q. That's when the search was made. A. Yes.

Q. And when you took this pistol out of his waistband, you then placed him under arrest. A. Yes.

Q. And waited for other policemen to come. A. Yes.

Q. And searched the automobile further. A. Yes.

Q. Now, who was the informant who spoke to you in the parking lot of the gas station?

Mr. Browne: Object to that, your Honor.

The Court: Objection sustained.

Mr. Green: I claim it, your Honor.

May I know the basis of the objection, your Honor?

Mr. Browne: I think that is in the nature of a privileged communication. I rely on the very recent decision of McCray versus somebody in the United

States (14) Supreme Court, which holds that in the nature of a privileged communication. There is no obligation on the police officer to disclose who the informant is.

Mr. Green: I don't think there is any Connecticut decision that holds that, your Honor. The McCray case which came down very recently merely holds that the obligation to disclose is not constitutional in its nature. And I claim that under 6-49, the arrest statute,—and I presume it is claimed here that the search was incidental to an arrest—that the officer has to have reasonable grounds that a felony was being committed.

Now, in determining whether or not he has reasonable grounds and whether a felony was being committed, I certainly think the person who gave him the information becomes extremely important. Outside of that, the Court cannot make a determination of this issue.

The Court: Objection is overruled without comment. I don't see any need for having anything on the record. I think it is a well known fact of disclosure of this type, of this nature.

Mr. Green: I presume your Honor is ruling that the State's objection is sustained.

The Court: That's correct.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Q. Now, had you known this person before, Officer? (15) A. Which person, sir?

Q. The person who gave you the information. A. Yes, sir.

Q. And you stated that this person had given you prior information with respect to crime. A. Yes, sir.

Q. When? A. On previous occasions, possibly months previous to this occasion.

Q. Well, would you please tell us what information was given and when it was given? A. Well, on the occasion I was assigned to a detail at the Bridgeport Railroad Station. I don't recall the exact time. But it was in the winter of '65. The informant had given me information regarding homosexuals in the railroad station.

Q. What other information had this informant ever given you, Officer? A. None that I can recall right at the time. I had conversed with the informant on occasion and had determined as a consequence of these conversations that the informant was a reasonably trustworthy person.

Q. What did you base this judgment on, Sergeant? A. Well, the observations with regard to criminal activities.

Q. Well, you have mentioned only one, and you don't recall any other, I take it? (16) A. No specific instances.

Q. Now, with respect to the information that was given you about homosexuals in the Bridgeport Police Station, did that lead to an arrest? A. No.

Q. An arrest was not made. A. No. There was no substantiating evidence.

Q. Pardon? A. There was no substantiating evidence.

Q. There was no substantiating evidence ? A. No.

Q. And what do you mean by that? A. I didn't have occasion to witness these individuals committing any crime of any nature.

Q. In other words, after this person gave you the information, you checked for corroboration before you made an arrest. Is that right? A. Well, I checked to determine the possibility of homosexual activity.

Q. And since an arrest was made, I take it you didn't find any substantiating information. A. I'm sorry counselor, you say since an arrest was made.

Q. Was not made. Since an arrest was not made, I pre-

sume you didn't find any substantiating information. A. No.

Q. So that, you don't recall any other specific information given you about the commission of crimes by this informant. (17) A. No.

Q. And you still thought this person was reliable. A. Yes.

Q. And you base this on general conversation. Is that right? A. No, the other occasion that I mentioned, wherein obviously this information I had received was accurate.

Q. If it was accurate, why wasn't an arrest made, Officer? A. As I say, there was no evidence at that particular time to make an arrest on. If you will permit me, these people were apparently aware that I was scrutinizing them and left the scene.

Q. Now, in this case, there was evidence to make an arrest on, am I right? A. Yes.

Q. Because you did find the pistol. A. Yes.

Q. Now, after you found the pistol, how were other cars summoned? A. I had summoned the cars previous to finding the pistol.

Q. And did you then prior to making your further search of the vehicle attempt to get a warrant? A. No, sir.

Q. Because you then had the accused under arrest. Is that right? A. That's right, sir.

Q. So, you then proceeded to order him out of the car. (18) A. Yes.

Q. And you then proceeded to search the car. A. Yes.

Q. And in the course of this search, what did you find? A. That he had twenty-one packs of white substance which later proved to be heroin; he had six additional packages in a jar in his coat pocket which later on proved to be heroin. He had a machete under the front seat of the car, a second revolver in the trunk of the car, numerous other items not connected with the crime.

Q. Do you know whether or not your informant had a criminal record? A. I believe the informant did.

Q. And was her name Jane Cooper?

Mr. Browne: Object to that, your Honor.

The Court: Objection sustained.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Q. Do you know what that criminal record was? A. In detail, no.

Q. But extensive. A. No.

Q. Do you know what type of crime? A. Yes.

Q. Would you please state it for the record? A. Your Honor, if I may, is this a must?

Mr. Browne: I tender no objection to it.

(19) The Court: Pardon?

Mr. Browne: I am not making any objection.

The Court: You must testify then.

A. For the most part, I think the informant's record pertains to—

Mr. Browne: Well, is this something you know, Officer?

The Witness: No.

Mr. Browne: Or something you are speculating about.

The Witness: Speculating.

Mr. Browne: I will object.

The Court: Objection sustained.

Mr. Green: I claim it, your Honor. The officer has testified that he has knowledge of this person, that he had conversations with this person on which he felt he could rely, and I think his knowledge of

this person becomes a vital issue in this case, because it is a question of whether or not he has reasonable grounds to believe the truth of these statements.

The Court: He so stated that he had grounds for it. And he has had contact with him in the past. It may be reliable in certain instances. You are attempting to obtain certain information that had been objected to, to ascertain, not by name, but by description, information the Court has refused to allow. This seems to be an indirect way.

(20) Mr. Green: I am in no sense endeavoring to find this out through indirection.

The Court: You may by indirection get it. So, what you could not get by direction the Court does not intend to permit you to get by indirection.

Mr. Green: If it please the Court, I would like this on the record. Certainly the character and the criminal record of the informant is highly material to the reliability of the information. And it is for these reasons that I find it necessary to ask these questons.

The Court: He says he doesn't know. He says he is speculating. Now, do you know the criminal record of the informer?

The Witness: No.

The Court: You don't.

The Witness: No, not actually.

The Court: That takes care of that.

Mr. Green: Let me just say it once again, your Honor. I am not concerned with whether or not Sgt. Connolly accurately reports this person's police record. I am not trying to establish the police record of the person. He can be in error in terms of what he testifies to. What I am concerned with

is what he thought the police record was and what his knowledge of it was. That is all I am asking.

The Court: Ask him. You are indicating from the (21) examination, not only his knowledge, but as a fact that that is his record.

Mr. Green: No, I am asking him what did he know about this person's police record. Let me rephrase the question, if I may.

By Mr. Green:

Q. Sgt. Connolly, what did you believe the police record of your informant to be as of this time?

Mr. Browne: Well, your Honor, I am going to object to that. If I may make a suggestion. Possibly Mr. Green might ask if he knows as a fact of any conviction at all, of any crime at all.

The Court: He wants to know what the police officer believes concerning this individual's police record, or knew about his police record.

Now, he can testify. Does he know about his police record, if he had a police record? Ask if he had a police record, or if he thought he had a police record, or if he knew he had a police record.

Mr. Green: I think he has already testified that he believed the person had a record. I am asking him what he believed that record to be. Whether his belief is accurate or inaccurate is totally immaterial to this question.

The Court: Yes. What he thought at that particular time, what he thought this particular record was, he can testify to that. It may not be a (22) record. He may not even have a record. Based on that, for that purpose, it is admissible.

Mr. Green: If I may rephrase the question.

Q. Sergeant, at the time of this occurrence, what did you believe the criminal record of this person to be? A. Breach of the peace, loitering.

Q. And nothing else? A. Nothing that I have any knowledge of.

Q. And do you know whether or not these were isolated occurrences, or were there a number of offenses? A. No, I don't know whether these were isolated or whether they consisted of a number of them.

Q. Now, incidentally, when you approached the car in which the accused was sitting, the car was parked at the curb. A. Yes, sir.

Q. The motor was not running. A. No, sir.

Q. The accused was sitting there silently and quietly. A. Yes, sir.

Q. And then, of course, you found the pistol. Is that right? A. That's right, sir.

Mr. Green: I have no further questions.

Redirect Examination by Mr. Browne:

Q. Officer, in addition to the items that you say were found on the accused or in his automobile, do you recall personally seeing any rolled balloons? (23) A. Yes, sir.

Q. And I don't think you mentioned those before. Do you know where they were found? A. In a jar in the suspected right hand leather coat pocket.

Q. And do you know whether the contents of those rolled up balloons were subsequently examined? A. Yes.

Q. And do you know what was the contents of the balloons? A. Heroin, sir.

Q. They were also narcotics. Is that right? A. Yes, sir.

Q. Now, Officer, am I correct that before you went over

to the car in which Mr. Williams was seated, you placed a call on the police radio for additional help? A. Yes, sir.

Q. And other officers in response to that call subsequently came to the scene. A. Yes.

Q. And you did that before you went over to Mr. Williams. A. Yes, sir.

Q. And had you ever gotten any information from this informant at all that was not correct? A. No, sir.

Mr. Browne: I have nothing further.

Recross Examination by Mr. Green:

Q. Had you ever gotten any information from this informant (24) that led to an arrest of an accused person? A. On this occasion.

Q. This was the first one. Is that right, Officer? A. That's right.

Q. Incidentally, in searching the automobile, did you find a pocketbook in the back seat? A. No, sir.

Mr. Green: I have nothing further.

By Mr. Browne:

Q. It was your opinion, Officer, that this person was reliable and trustworthy. Is that right? A. That's right.

The Court: He has answered that question. You may be excused.

Mr. Browne: You may step down.

Testimony in Fairfield County Superior Court Case No. 16,746 Trial.

* * * * * *

(89) JOHN E. CONNOLLY, having been called as a witness, was duly sworn, and testified upon his oath as follows:

The Clerk: State your name, please.
The Witness: John E. Connolly.
The Clerk: Spell your name for the Court, please.
The Witness: C-o-n-n-o-l-l-y.
The Clerk: And your address?
The Witness: 75 Success Avenue, Bridgeport.
The Clerk: You may be seated, sir.

Direct Examination by Mr. Browne:

Q. Your occupation, please, sir? A. Sgt. Bridgeport Police Department.

Q. For how long have you been associated with the Bridgeport Police? A. This is my 20th year.

Q. And for how long have you been a sergeant, sir? A. About two years.

Q. Sergeant, whether or not you were on duty as a police officer on the early morning of October 30th of 1966? A. I was.

Q. And what tour of duty, what hours of your tour of duty did you have that evening, sir? A. Midnight to eight a.m.

Q. And that was a Sunday morning. A. Yes, sir.

Q. Were you on foot patrol that day? (90) A. No, sir.

Q. What were you doing? A. Radio patrol, radio car patrol.

Q. And were you alone in the car, or did you have someone with you? A. I was alone, sir.

Q. Were you covering one particular section of Bridgeport? A. The red sector. It is bordered by the City Line

on the east, the railroad main track on the west, the railroad viaduct on the north and the City Line again on the south, the harbor on the south.

Q. Whether or not you saw the defendant Robert Williams on that morning? A. I did, sir.

Q. And approximately what time was it that you saw him? A. Approximately 2:20 a.m.

Q. Now, whereabouts did you first see him? A. Seated in a car on Hamilton Street.

Q. Hamilton Street is in the City of Bridgeport? A. That's right, sir.

Q. Now, the Robert Williams that we are referring to, is that the same Robert Williams seated at the counsel table here this morning? A. That is, sir.

Q. Did you approach him in this car? A. I did, sir.

Q. And why did you do that, sir? (91) A. I had received information to the effect that he had a gun on his person.

Q. Is Hamilton Street a one way street, sir? A. It is.

Q. And in what direction is it one way, do you know? A. Westbound.

Q. On which side of Hamilton Street was the '58 Plymouth parked? A. The north side.

Q. And where was it in relation to any other street, sir? A. It was approximately two car lengths west of Green Street.

Q. Green Street intersects Hamilton Street, is that right? A. It does.

Q. What direction does that run in, sir? A. North and south.

Q. Where had you been prior to going to this 1958 Plymouth automobile? A. Parked in a gas station at Hamilton and East Main.

Q. And from the gas station, could you see this automobile? A. I could, sir.

Q. Which seat was Mr. Williams seated in, the front seat or the back seat? A. The front seat.

Q. And on the driver's side or the passenger's side? A. The passenger's side.

(92) Q. And would that be the side closest to the sidewalk on the north side of Hamilton Street? A. Yes, sir.

Q. Now, how did you approch that vehicle, Sergeant? A. I walked diagonally from the gasoline station across Hamilton Street, around the front of the vehicle to the passenger's side of the vehicle on the sidewalk.

Q. What did you do when you arrived at the passenger's side of the vehicle? A. I tapped on the window and told the occupant to open the door.

Q. And what happened at that time? A. He rolled down the window of the door.

Q. And did you do anything when he rolled down the window? A. I reached in the vehicle.

Q. Sergeant, what did you do? A. Removed a .32 Army Special Revolver from his waistband.

Mr. Green: May it please the Court, I would like to state for the record, that this was a subject of a motion to suppress. I object to the admission of any evidence with respect to materials taken from this automobile on the same grounds that were stated at the time this motion was argued before your Honor on April 4th, 1967.

And I do so for the purpose of preserving our rights with respect to an appeal. And I wonder if the objection could stand with respect to all of the (93) testimony with respect to items taken from this automobile, otherwise, I of course would have to interrupt and object.

The Court: Your objection is overruled. You may have an exception.

Mr. Green: May this objection stand with respect to all other items?

The Court: It may stand.
Mr. Green: All right.

Q. Sergeant, I am showing you an item which appears to be a pistol. I will ask you whether or not you can identify that? A. I can, sir.

Q. And what is that, Sergeant? A. This is the .32 Army Special Revolver that I removed from the waistband of the accused.

Mr. Green: I will object to the portion, the last phrase, the last phrase of the answer.

Mr. Browne: What was that?

Mr. Green: "It was removed from the waistband of the accused," those words. It actually isn't responsive. The witness was asked—

The Court: No, rephrase your answer. Your answer must be rephrased.

Q. Officer, before you reached for this gun, did you have any conversation with Mr. Williams at all? A. Other than to tell him to open the door, no, sir.

(94) Q. And at that time, why did you reach in and remove this gun? A. Well, I wanted to remove the gun before he used it.

Q. In other words, you were concerned about your own safety at that time.

Mr. Green: Your Honor, the State's Attorney is leading the witness.

The Court: You just testified that you saw a gun, and you removed the gun. That will stand, that portion.

Q. And then is that the gun that you removed? A. Yes, sir.

Mr. Browne: I will offer it.

Mr. Green: I object to the offer on the same basis.

The Court: Objection overruled.

Mr. Green: Exception.

The Court: You may have an exception. Admitted and marked State's Exhibit B.

(The above described item was received in evidence and marked as State's Exhibit B.)

Q. Did you do anything after removing the gun from Mr. Williams? A. I placed him under arrest.

Q. Did anyone else arrive at the scene, sir? A. Yes, two officers that I had summoned prior to seizing the weapon arrived.

(95) Q. And do you know their names? A. Officer Krusinski and Officer Sharnick.

Q. And at what point did they arrive? A. After I had removed the weapon from the accused.

Q. And after the accused was placed under arrest, what was done? A. Well, I advised him of his constitutional rights, and then a further search of his person in the vehicle was made.

Q. Now, just exactly what did you advise him of? A. I advised him that he was under arrest, that he wasn't obligated to make any statements whatsoever, that if he did they would be used, would probably be used, against him; that he could have an attorney before he answered any questions; that if he couldn't afford one, the State would supply him with one.

Q. And that was done right on Hamilton Street, sir. A. Right on Hamilton Street.

Q. And were the other officers present at that time? A. They arrived shortly after that, yes.

Q. Now, was Mr. Williams searched at the scene there on Hamilton Street? A. Yes, he was.

Q. And who conducted that search? A. Myself and the other two officers.

Q. And did you find anything? Did you personally find anything on his person? (96) A. Yes, I did, sir.

Q. And what is that, sir? A. I found a small jar in his right hand coat pocket, leather coat pocket.

Q. Showing you a small, what appears to be an Alka Seltzer jar. Can you identify that, Sergeant? A. Yes, I can.

Q. And how are you able to identify it? A. By my initials on the label.

Q. And what is that? A. This is a small empty jar of Alka Seltzer. It contains a number of balloons with a substance in the balloons.

Q. And is that the jar you are referring to that you removed from Mr. Williams' right pocket? A. It is.

Mr. Browne: May this be marked for identification, your Honor?

The Court: Marked Exhibit C for identification.

(The above described items was marked as State's Exhibit C for identification.)

Q. Now, what was inside of the jar, Sergeant? A. A number of rubber balloons, which contained six cellophane packets of a white substance.

Q. And if you will examine the jar, sir, are those the type of balloons that you are referring to? A. Yes, sir.

Mr. Green: Your Honor, at this time I must once (97) again state for the record that I believe these are among the items that were the subject of our

motion to suppress, and I object to their admissibility in reference to these proceedings for the same reasons.

The Court: Objection overruled.

Mr. Green: May I have an exception?

The Court: You may have an exception.

Q. Sergeant, referring to what has already been marked as State's Exhibit A for Identification, the large manila envelope, and referring to a small white envelope contained therein, showing you what appears to be a cellophane package or envelope, can you tell us whether or not that is the type of envelope that was contained in the ballons inside of the Alka Seltzer jar which was inside of the right coat pocket of Mr. Williams? A. It is, sir.

Q. And, incidentally, Sergeant, is there any marking of yours on that? A. There is.

Q. What marking would that be? A. My initials.

Q. And can you tell us whether or not that was one of the—is there any way you can tell whether or not that was one of the packets found inside the balloon which was inside of the Alka Seltzer jar? A. I believe it is, sir.

Mr. Green: I object once again for the same reason. (98) I hesitate to be repetitive.

The Court: Wait until he offers it.

Mr. Browne: I am not offering anything.

Mr. Green: All right. Are you going to offer it now?

Mr. Browne: Not right now.

Q. Did you do anything further at the scene, sir, on Hamilton Street? A. Yes, sir, we searched the vehicle of the accused.

Q. And did you, yourself, find anything in the vehicle? A. A machete under the front seat.

The Court: Pardon me just a minute.

Mr. Browne: Would your Honor like that last answer read?

The Court: Yes. Would you read the last question?

Mr. Browne: The last question and answer possibly, Mr. Schreff.

(Whereupon the question and answer were read by the Court Reporter.)

Mr. Green: There was an objection, your Honor.

The Court: Objection overruled.

Mr. Green: Exception.

The Court: Noted.

Q. Incidentally, Sergeant, referring back to State's Exhibit B, this pistol, would you tell us whether or not that was loaded when you examined it? A. It was fully loaded, sir.

(99) Mr. Green: Same objection.

The Court: Objection overruled.

Mr. Green: Exception.

The Court: You may have an exception.

Q. Sergeant, are you able to identify that? A. I am, sir.

Q. And what is that, sir? A. The initials "S" and "C" on the handle.

Q. And how were you able to identify that, Sergeant? A. By the initials "S" and "C" on the handle, which I placed there.

Q. All right. And was that brown paper wrapping on the blade at the time that you found it? A. No, sir.

Q. That is something that was added either by yourself or the Police Department. A. That's right, sir.

Mr. Browne: I will offer this as a State's Exhibit, your Honor.

Mr. Green: I object.
The Court: Objection overruled.
Mr. Green: May I have an exception?
The Court: You may have an exception.

(The above described item was received in evidence and marked as State's Exhibit D.)

Q. On which side of the front seat was that machete, Sergeant?

(100) Mr. Green: I don't think it has been established that it was on the front seat, your Honor.

Q. Where did you exactly find the State's Exhibit D, Sergeant? A. Under the front seat, passenger seat.
Q. That's the side on which Mr. Williams was seated. A. That's right, sir.
Q. Was anything else found on Mr. Williams' person? A. Yes, sir.
Q. And what was that, sir? A. It was—

Mr. Green: Objection.

A. —twenty-one packets.

Mr. Green: Objection, if your Honor please.
The Court: He hasn't identified it yet, as to what he found.
Mr. Green: Objection to the question.
I object to the question itself as to what was found on Mr. Williams' person once again for the same reason.
The Court: You object to the question as a leading question?
Mr. Green: No, I object because of the motion to

suppress and the reasons that the items that were found—

The Court: We haven't gotten to the items yet.

Mr. Green: I am fearful, as has often happened, (101) that it may be too late as far as the record goes. I think all too many of us have gone to the Supreme Court and have found that our objections are not timely.

The Court: To be safe, overrule the objection.

Mr. Green: May I have an exception?

The Court: You may have an exception.

A. Twenty-one packets similar to the packet that was found in this jar, this wallet.

Q. In other words, there were an additional twenty-one cellophane packets. Is that right? A. That's right.

Q. Now, removing from State's Exhibit A for identification a smaller white envelope, Sergeant, I am showing you a number of small cellophane packets. I am going to ask you whether or not you are able to identify those in any way? A. I am.

Q. And how are you able to identify them, Sergeant? A. By my markings on them.

Q. And would you tell his Honor, please, what your marking is on there? A. I put on my initials your Honor.

The Court: On each one individually?

The Witness: On each one individually.

Q. And you marked each of those twenty-seven packets with your initials. Is that right? A. That's right, sir.

Q. And there were twenty-one taken from the wallet. (102) A. Yes.

Q. And the other six were in the Alka Seltzer jar. A. That's right.

Q. And what did you do with these after they were

marked, Sergeant? A. I turned them over to Officer Sharnick.

Q. And he was another uniformed man at the scene? A. Yes.

Q. Did you see those items at all after they were delivered to Officer Sharnick on that morning? A. I ordered him to take them to Sgt. Barrett at the Special Service Division for analysis.

Q. And do you know whether or not the gun, State's Exhibit B, and the State's Exhibit D has been in the custoday of the Bridgeport Police from that date on? A. They have.

Mr. Green: Objection, if your Honor please.

The Court: If you know. Do you know of your own knowledge?

The Witness: I turned them over to the record division and got a receipt, your Honor. I turned the articles over to the record division, received a receipt, surrendered that receipt today and brought the articles here to Court.

Q. Both of these items additionally bear your markings made on October 30th. A. That's right.

(103) The Court: Do you object to it?

Mr. Green: I don't quite get it. As I understood it, it was given to Officer Sharnick and ordered taken—

Mr. Browne: No, that's the packets, 27 packets, I believe.

Mr. Green: What do you have reference to now?

Mr. Browne: I am now referring to the gun.

The Court: And the machete.

Mr. Browne: And the machete.

Mr. Green: Was there testimony that they were filed with the record division?

Mr. Browne: Yes.

Mr. Green: Is that right?

The Witness: Yes.

Mr. Browne: You may inquire.

Cross Examination by Mr. Green:

Q. The balloons you testified to were found where? A. In this jar.

The Court: Referring to what, State's Exhibit what?

Mr. Green: State's Exhibit C for identification.

The Court: All right.

Q. And this was after you found the pistol. Is that right? A. That's right, sir.

Q. And thereafter, you searched this accused. (104) A. Yes, sir.

Q. And you found the wallet. A. Yes, sir.

Q. You also searched the automoible. A. Yes, sir.

Q. And this was after he was well under arrest? A. After he was under arrest, sir.

Q. You placed him under arrest after you found the pistol. A. Right, sir.

Mr. Green: I have no further questions.

Redirect Examination by Mr. Browne:

Q. Why did you remove the pistol before you placed him under arrest? A. I didn't want him to use the pistol on me, sir.

Mr. Browne: Nothing further.

Recross Examination by Mr. Green:

Q. Why didn't you place him under arrest immediately, Officer? Let me rephrase that question.

On the motion to suppress, you testified that you were looking for corroboration about the report that you had gotten. Isn't that true? A. I don't recall making that statement.

Q. You don't recall making that statement. You don't remember that? A. I'm afraid not, sir.

Q. But nevertheless, you went over to this car and you (105) felt around this person's waistband, is that right? A. No, sir, I didn't feel around the waistband. I put my hand directly in on the revolver.

Q. Where was the revolver? A. In his waistband.

Q. Under his coat? A. Yes, sir.

Q. And you put your hand in under his coat. A. His coat was open, sir.

Q. You put your hand in. It wasn't visible from the outside. A. No, sir.

Q. And you pulled a revolver out. Is that right? A. That's right, sir.

Q. And then you placed him under arrest. A. Right, sir.

Mr. Green: I have no further questions.

Mr. Browne: No further questions.

The Court: You are excused.

• • •

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUN 15 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. ~~1-8281~~ 70-283

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DONALD A. BROWNE,
Assistant State's Attorney
for Fairfield County,
Attorney for Petitioner,
County Court House,
Bridgeport, Connecticut 06604.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. .....

FREDERICK E. ADAMS, Warden, Connecticut State Prison,
Petitioner,

vs.

ROBERT WILLIAMS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Frederick E. Adams, Warden of the Connecticut State Prison, respectfully prays that a writ of certiorari issued to the United States Court of Appeals for the Second Circuit, to review the decision and judgment of that Court entered on April 14, 1971, after rehearing in banc reversing the order of the District Court for the District of Connecticut dismissing a petition for a writ of habeas corpus.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit entered on April 14, 1971 after rehearing in banc is not yet reported but is appended as Appendix A. This opinion overruled the earlier opinion of the Court of Appeals of the Second Circuit entered on December 16, 1970 which is reported at 436 F. 2d 30. The initial opinion af-

firmed a judgment of the United States District Court for the District of Connecticut denying relief to the respondent which is not reported and a copy of which is appended as Appendix C. The opinion of the Connecticut Supreme Court, sustaining the original conviction of Robert Williams is reported at 157 Conn. 114, 249 A. 2d 245.

Statement of Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on March 14, 1971. The statutory provision believed to confer on this Court jurisdiction to review that judgment by writ of certiorari is 28 U.S.C. § 1254(1).

Question Presented

The respondent's application for writ of habeas corpus presented essentially one limited question for determination and that was exclusively whether items seized from the person and automobile of the respondent on the date of October 30, 1966 were obtained as the result of an unconstitutional search or seizure. The case evolves from an undisputed factual situation as found by the Connecticut Superior Court and the District Court for the District of Connecticut. The constitutional significance of the search and/or seizure necessarily requires a careful examination of these facts.

Succinctly stated the question presented by the factual situation is as follows:

> May a single police officer acting upon specific information received at 2:00 A.M. from a known person to the effect that a particular automobile contains a person with a gun in his waistband and with narcotics approach that automobile to investigate that information and finding such a person in the vehicle and con-

cerned for his safety and protection may he thereupon remove the weapon from the occupant's waistband without first seeing it and without making any other search of the person?

Constitutional Amendments Involved

The Respondent has sought and now attained relief by the Fourth Amendment right against unreasonable searches and seizures, made applicable to the States by the Fourteenth Amendment.

Statement

The respondent, Robert Williams, was arrested by a Bridgeport Police Officer by the name of Sergeant John Connolly on Hamilton Street in Bridgeport at about 2:20 a.m. on October 30, 1966. On that date Sergeant Connolly was on duty alone in an area of the city which consisted of a neigborhood with a high incidence of crime of various kinds. At approximately 2:15 a.m. on that date, in a gasoline station on the corner of East Main Street and Hamilton Street, Sergeant Connolly met and had a conversation with a person who was known to him. Sergeant Connolly considered this person to be reliable and trustworthy and had received information which he considered credible from the same person on a prior occasion although it did not result in an arrest.

At that specific time and location the same individual pointed out a specific automobile parked on Hamilton Street to the Sergeant and advised him that there was an occupant in the automobile who had both a pistol in his waistband and also narcotics. After receiving this information Sergeant Connolly determined to investigate and accordingly walked out of the gas station and across Hamilton Street in the direction of the specific auto. Upon ar-

rival at the auto Sergeant Connolly determined that there was in fact an occupant (the respondent) and requested the respondent to open the door. At that time Sergeant Connolly was still alone and it is undisputed that he was concerned about his personal safety and protection.

The respondent proceeded to roll down the passenger door window and Sergeant Connolly immediately placed his hand in through the open window and directly onto a pistol which was lodged in the respondent's waistband. Sergeant Connolly immediately seized and removed the pistol which was fully loaded. Before seizing the pistol the Sergeant did not tell the respondent that he was under arrest, and had made no search of the respondent. In seizing the pistol, Sergeant Connolly acted because he wanted to remove the weapon before the respondent had an opportunity to use it on himself (the officer).

After removing the respondent's pistol, Sergeant Connolly placed him under arrest for possession of the weapon and conducted a further search of his person which disclosed six cellophane packets of a white substance (heroin) in an Alka-Seltzer jar in the respondent's coat pocket and an additional 21 packets containing the same substance in the respondent's wallet. A further search of the respondent's auto at the scene disclosed a machete hidden under the front seat and later at police headquarters a set of narcotic "works" was found on top of the respondent's head under his hat.

The respondent was charged with the crimes of Violation of the Uniform State Narcotics Drug Act, Section 19-246, Connecticut General Statutes, involving the control of heroin; Carrying a Pistol Without a Permit in violation of Section 29-35, Connecticut General Statutes; and having Weapons in a Motor Vehicle in violation of Section 29-38, Connecticut General Statutes.

The respondent filed timely Motions to Suppress in both the Connecticut Circuit Court and Superior Court alleging

unconstitutional searches and seizures and following denials of these Motions the respondent was convicted of all three charges following a Court trial in the Superior Court on April 11, 1967. The respondent's convictions were affirmed by the Connecticut Supreme Court at 157 Conn. 114, 249 A.2d 245 and certiorari was denied by the United States Supreme Court at 395 U. S. 927, 23 L. Ed. 2d 244, 89 S. Ct. 1783.

On August 14, 1969 the respondent filed the instant petition for a writ of habeas corpus and after a hearing held on November 14, 1969 the District Court denied the petition on January 6, 1970.

Thereafter the respondent's appeal to the Second Circuit Court of Appeals was heard on September 29, 1970 and the decision of the District Court was affirmed on December 16, 1970 by a divided Court. The respondent's request for a re-hearing was granted by the Court, which subsequently reversed the District Court by an in banc decision on April 14, 1971.

Reasons for granting the writ.

The thrust of the respondent's claim of an unconstitutional intrusion upon his person as presented within his initial Petition and as apparently adopted by the Second Circuit Court of Appeals focuses on the propriety of Officer Connolly in leaving the gas station and walking up and across Hamilton Street to investigate his information or "to insist on an encounter, to make a forcible stop." Dissenting Opinion, page 35.

It appears undisputed that once Connolly located himself alongside the auto and the window was lowered he was constitutionally justified in reaching into the waistband and removing the weapon without attempting an external "pat" which was impracticable under the circumstances.

In the gasoline station the officer spoke and received his information from a person who was known to him by name, who was considered by the officer to be a reliable and trustworthy person and who then and there contributed specific information relating to an occupant of a specific automobile having specific items of contraband at a specific location (as to the gun). At that time and place the officer was required to make his immediate decision whether or not he should walk ouf of the gasoline station and across the public street to investigate and determine whether this information as presented was deserving of police inquiry.

The language of the United States Supreme Court in the case of *Terry* v. *Ohio*, 392 U. S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868, would appear to be highly significant to the instant question:

It appears clear and undisputed that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." *Terry* v. *Ohio*, ante, at page 22.

"It was this legitimate *investigative* function Officer McFadden was discharging when he decided to approach petitioner and his companions." (emphasis added). *Terry* v. *Ohio*, ante at page 22. See also *Young* v. *United States*, 435 F. 2d 405; *Carpenter* v. *Sigler*, 419 F. 2d 169.

The petitioner respectfully submits that the information received by Officer Connolly, specific in nature and corroborated by his personal observation sufficiently justified his decision to investigate even to the extent of a "stop" if his conduct actually constituted one.

The petitioner further submits that specific information from a known source should be just as persuasive as unusual activity in igniting police inquiry. See *United States* v. *Unverzagt*, 424 F. 2d 396 in which the Court ex-

pressly sustained a seizure or stop which was the result of information received by postal inspectors that a party was armed. See also *Ballou* v. *Massachusetts*, 403 F. 2d 982, cert. denied 394 U. S. 909, 89 S. Ct. 1024, 22 L. Ed. 2d 222, where the Court uses the following language:

"The course of action decided upon here—to follow up the (anonymous) tip and investigate—was properly responsive to all the information the officers possessed and the governmental interests of crime prevention and detection. Failure to have investigated would, to use the Court's words in Terry, supra, at 23, 88 S. Ct. at 1881, 'have been poor police work indeed.' "

Acknowledgement that the basis or origin of the officer's investigation may be information which he receives in the line of duty may also be found in the case of *Sibron* v. *New York*, 392 U. S. 40 at 62 and 63 where the Chief Justice makes express mention that Officer Martin had received no information concerning Sibron, and certainly indicates that information received might well be considered among the particular facts from which the officer infers that the individual in question is armed and dangerous.

"This demand for specificity in the *information* upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Terry* v. *Ohio*, ante, at page 21, note 18 and cases collected therein. (emphasis added)

The petitioner does not disagree with the observation in the dissenting opinion of Judge Friendly at page 37 that the Supreme Court in *Terry* was adopting a test balancing the amount of cause required to be shown against the extent of the particular invasion of personal security. The petitioner does disagree with any position that the same amount of probable cause must be shown for a protective search as would be necessary for an arrest and a search incidental thereto.

"There must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger," *Terry* v. *Ohio*, ante, at page 27.

"The Supreme Court has made it clear that a law enforcement officer, when he justifiably believes that the individual he is investigating at close range is armed, has the power for his own protection to take necessary measures to determine whether that person is in fact carrying a weapon." *U. S.* v. *Thompson*, 420 F. 2d 536, 540 (1970); *Terry* v. *Ohio*, ante, at 24.

The intrusion caused by the seizure of the pistol by Officer Connolly from the respondent's waistband was clearly limited strictly to what was minimally necessary to determine whether the respondent had the weapon and to disarm him once he discovered it. Clearly the officer was not conducting an exploratory search for whatever evidence of criminal activity he might find.

The action of Officer Connolly was clearly not "the product of a volatile or inventive imagination, or undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so." cf, *Terry* v. *Ohio*, ante, at 28.

The seizure of the respondent's pistol was strictly circumscribed to the exigencies which justified its initiation. cf, *Terry* v. *Ohio*, ante, at 26. Officer Connolly "* * * confined his search strictly to what was minimally necessary

to learn whether (the man) was armed and to disarm (him) once he discovered the (weapon)." *Terry* v. *Ohio*, ante, at 30.

The petitioner respectfully submits that within the Terry decision the Supreme Court has determined that each individual factual situation must "be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry* v. *Ohio*, ante, at 21, 22.

It is the position of the petitioner that Officer Connolly did conduct himself appropriately and reasonably from the moment of his initial contact with the reporting witness and that his conduct lies clearly within the language of the Terry decision.

It appears undisputed that if the officer was legally justified in seizing the respondent's loaded pistol, the ensuing arrest and search of respondent's person and automobile and the subsequent seizure of the heroin and the machete were legally justified as incident to his arrest. *Preston* v. *U. S.*, 376 U. S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777.

Conclusion

It is respectfully submitted that the decision of the Circuit Court of Appeals for the Second Circuit in the instant matter is in conflict with the decision of this Court in the case of *Terry* v. *Ohio* and is in conflict with the decisions of other Circuit Courts of Appeal applying the Terry decision and for that reason and the reasons previously set forth above, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

DONALD A. BROWNE,
Assistant State's Attorney
for Fairfield County,
Attorney for Petitioner.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Rehearing *in banc* ordered March 3, 1971

Decided April 14, 1971.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Respondent-Appellee.

Before:

LUMBARD, *Chief Judge*,
FRIENDLY, SMITH, KAUFMAN, HAYS,
ANDERSON and FEINBERG, *Circuit Judges.*

PER CURIAM:

Upon application by petitioner, a majority of the active members of this court voted to reconsider *in banc* the decision of the panel in this case on the record and briefs originally filed, without further oral argument. Both parties were invited to file supplemental briefs, and both have done so. Upon reconsideration, we conclude that on the basis of the facts then known to him, Sergeant Connolly had neither probable cause to arrest Williams nor any

other sufficient cause for reaching into Williams's waistband, an action which led to the subsequent search of Williams's car and the discovery of a machete and narcotics later introduced in evidence at Williams's trial. See *Terry* v. *Ohio*, 392 U.S. 1 (1969); *Spinelli* v. *United States*, 303 U.S. 410 (1969); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Henry* v. *United States*, 361 U.S. 98 (1959); *Draper* v. *United States*, 358 U.S. 307 (1959). Since those illegally seized items should have been excluded from evidence, Williams's conviction must be set aside. Accordingly, we reverse the order of the district court denying Williams's petition for a writ of habeas corpus.

HAYS, *Circuit Judge* (dissenting):

The facts of this case were as follows:

> "At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested

> the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State v. Williams*, 157 Conn. 114, 116-17 (1968); cert. denied, 395 U.S. 927 (1969).

In *Brinegar v. United States*, 338 U.S. 160, 175 (1949), the Court said:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."

A familiar way of testing the "factual and practical considerations of everyday life" is to ascertain what practical everyday people would do in the given factual circumstances. I would suppose that very close to one hundred per cent of the people of this country, if they were asked whether in the situation in which he found himself, the Bridgeport police sergeant's actions were those of a reasonable and prudent man, would unhesitatingly reply in the affirmative. If the police officer had disregarded the information that a man sitting alone in a car in a high crime area at 2:15 in the morning had a gun stuck in his belt, his conduct, far from being reasonable and prudent, would have been bizarre and erratic.

An "exclusionary rule" which deters police officers from taking ordinary precautions against criminal conduct and encourages possession of guns, machetes and narcotics, is surely an unacceptable rule.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 64—September Term, 1970.

(Argued September 29, 1970 Decided December 16, 1970.)

Docket No. 34826

ROBERT WILLIAMS,

Petitioner-Appellant,

—v.—

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent-Appellee.

Before:

DANAHER,* FRIENDLY and HAYS,

Circuit Judges.

Appeal from denial of petition for a writ of habeas corpus after hearing before T. Emmet Clarie, *United States District Judge* for the District of Connecticut. Affirmed.

DONALD A. BROWNE, Assistant State's Attorney for Fairfield County, Connecticut (JOSEPH T. GORMLEY, JR., State's Attorney), *for Appellee.*

* Senior United States Circuit Judge of District of Columbia Circuit, sitting by designation.

Appendix B

EDWARD F. HENNESSEY, Esq., of Hartford, Connecticut, *for Appellant.*

DANAHER, *Senior Circuit Judge*:

Charged with carrying a pistol on his person without a permit, §29-35 of the Connecticut General Statutes, with having narcotic drugs in his control, §19-246, and having a weapon in a motor vehicle occupied by him, §29-38, appellant was convicted in the Superior Court for Fairfield County, Connecticut, after a trial to the court. His conviction was affirmed on appeal, *State* v. *Williams*, 157 Conn. 114, 249 A.2d 245 (1968), *cert. denied* 395 U.S. 927 (1969). Thereupon he sought habeas corpus in the United States District Court for the District of Connecticut raising claims identical with those which had been considered theretofore in the state courts. His petition alleged that the evidence used against him in his state court trial was the product of an illegal search and seizure. Additionally he claimed he had been denied a speedy trial. District Judge Clarie denied relief, and appellant now has turned to us. We affirm.

I.

After a hearing, Judge Clarie found to have been substantiated the facts set forth in the Superior Court record and relied upon by the Supreme Court of Connecticut. Compendiously restated, we may note the following as here pertinent:

> "At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence

of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed . . . a machete under the front seat, twenty-one cellpphane packets containing a white substance in the defendant's wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin." *State* v. *Williams, supra,* 157 Conn. at 116, 117, 249 A.2d at 248, 249.

The Supreme Court of Connecticut decided that under the circumstances shown, the conduct of the officer was justifiable under the applicable Connecticut statutes.[1]

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1 Title 6, §49, Connecticut General Statutes Annotated, provides in pertinent part:

"... [P]olice officers ... in their respective precincts, *shall arrest,* without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the *speedy information of others,* and members ...

Appendix B

Thus the arrest which followed was fully sustainable quite aside from any authority given the officer by §6-49; his action was reasonable for he had not conducted a general exploratory search, he had merely grabbed the loaded revolver from the place where his informant had said it would be. In reliance upon *Terry* v. *Ohio*, 392 U.S. 1 (1968), the Court found that the course taken by the officer was far less extensive than that found reasonable in *Terry*.

II.

That the findings and conclusions of the Connecticut courts were not insulated from examination by Judge Clarie is obvious. *Ker* v. *California*, 374 U.S. 23, 34 (1963). Granting that the law of the state where the arrest without warrant took place determines its validity, *United States* v. *Di Re*, 332 U.S. 581, 589, *United States* v. *Viale*, 312 F.2d 595, 599 (2 Cir. 1963), we take account of the federal constitutional standard in appraising the issue here. Williams was arrested for illegal possession of

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of an organized local police department . . . shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority." (Emphasis added.)

The Connecticut courts have construed the statute to require that an officer "shall" arrest on the "speedy information of others," and so as an Act passed primarily to guide officers in the performance of their duties. *State* v. *Adinolfi*, 157 Conn. 222, 226, 253 A.2d 34 (1968); *Sims* v. *Smith*, 115 Conn. 279, 161 A. 239 (1932); *McKenna* v. *Whipple*, 97 Conn. 695, 701, 118 A. 40 (1922); *Price* v. *Tehan*, 84 Conn. 164, 167, 79 A. 68 (1911); and see *United States* v. *Traceski*, 271 F. Supp. 883, 885 (D. Conn. 1967).

Indeed, as bearing upon an officer's reliance upon speedy information, §53-168 provides punishment by fine or imprisonment or both for any person who knowingly makes to a police officer a false report or false complaint that a crime has been or is being committed.

a revolver. If that arrest were lawful, evidence secured as an incident thereto might properly be received. Were the facts and circumstances within the knowledge of the officer and of which he had reasonably trustworthy information sufficient to warrant a man of reasonable caution in the belief that an offense was being committed? The answer to that question determines the present issue. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949); *United States v. Traceski*, 271 F. Supp. 883, 885 (D. Conn. 1967); cf. *United States v. Rosse*, 418 F.2d 38, 39, n. 2 (2 Cir. 1969), *cert. denied*, 397 U.S. 998 (1970).

Inevitably, issues such as ours must be resolved upon the particular facts which vary from case to case. See, e.g., the discussion by Circuit Judge (now Justice) Blackmun in *Rodgers v. United States*, 362 F.2d 358, 362 (8 Cir. 1966), followed in *Kayser v. United States*, 394 F.2d 601, 605 (8 Cir.), *cert. denied*, 393 U.S. 919 (1968); cf. *Smith v. United States*, 358 F.2d 833, 835 (D.C. Cir. 1966) (Opinion by Circuit Judge, now Chief Justice, Burger).

So it is that our appellant relies upon *Sibron v. New York*, 392 U.S. 40 (1968), even as he would discount the companion case involving *Peters*, 392 U.S. at 66, and would reject the reasoning of *Terry v. Ohio*, 392 U.S. 1 (1968). The Court itself spelled out a distinction in *Chimel v. California*, 395 U.S. 752, 762 (1969). Where *Terry* had held that the scope of the search must be strictly tied to and justified by the circumstances involving a protective search for weapons, in *Sibron* the policeman had not been motivated by or his action limited to the objective of protection. On the contrary, *Chimel* explained, the officer had put his hand into the suspect's pocket with the purpose of finding narcotics which indeed were found.

Appendix B

In our case, the officer testified that he reached for the gun in concern for his own protection, and "I didn't want him to use the pistol on me, sir."

Chimel made clear that

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." 394 U.S. 752, 762-763.

So, we turn back, once again, to the circumstances under which the arrest occurred.

Here the officer received a complaint from an informant who was known to him, considered by the officer to be trustworthy and reliable, and one who in the past, as Judge Clarie found, had supplied valuable information regarding criminal activities. Cf. *United States* v. *Gazard Colon*, 419

F.2d 120, 122 (2 Cir. 1969). At once let it be noted additionally, that this was not the usual "informant" detailing aspects of some earlier action. He described current circumstances there and then constituting a felony under Connecticut law.

This was an eye-witness, invested with "built-in credibility." *McCreary* v. *Sigler*, 406 F.2d 1264, 1269 (8 Cir.), *cert. denied*, 395 U.S. 984 (1969); cf. *United States* v. *Acarino*, 408 F.2d 512, 514 (2 Cir.), *cert. denied*, 395 U.S. 961 (1969). He pointed out to the officer that there was at that very time a car parked across the street; there was a person seated in that vehicle; that person was armed; that he had a pistol at his waist and had narcotics in his possession.

Since this was a Bridgeport police sergeant, it is not unreasonable to infer he was experienced. Patrolling alone in an area noted for its high incidence of crimes of various kinds, he received the complaint that a crime was then in progress. Guided by Connecticut law, he was bound to act on the speedy information then at hand. *Supra*, note 1, and compare *Jackson* v. *United States*, 408 F.2d 1165, 1169 (8 Cir.), *cert. denied*, 396 U.S. 862 (1969). He crossed the street, saw the appellant in the car, and could readily check personally on the facts made available to him. Then he told that person to open the car door. Instead, the latter rolled down the window. The gun was at the appellant's waist just as the witness had described, and the officer seized a fully-loaded pistol. He thereupon arrested Williams.

That Williams, unlike *Terry*, was seated in a car is immaterial under the circumstances here. In determining whether the officer as a reasonably prudent man in the

circumstances acted reasonably in the belief that his safety might be in danger, we can not fail to give due weight to the specific reasonable inferences which he was entitled to draw from the facts in light of his experience. Swift measures were required that the exact facts might be determined and that the threat of harm be neutralized. The protection of the police officer required no less.[2]

Consequent upon the arrest, immediate search disclosed that Williams had a machete at his feet under the seat of the car. The intrusion, in short, was "reasonably designed" to discover, not only the pistol, but "other hidden instruments for the assault of the police officer." *Terry* v. *Ohio*, 392 U.S. 1, 29 (1968).

We may properly conclude here with Chief Justice Warren that:

> ". . . We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a

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2 Mr. Justice Black has emphasized that the test in such situations, in last analysis, turns upon "reasonableness." *Preston* v. *United States*, 376 U.S. 364, 367 (1964). He is not alone in that view. Another noted jurist has observed:

> It does not seem consistent with the objective of deterrence that the maximum penalty of exclusion should be enforced for an error of judgment by a policeman, necessarily formed on the spot and without a set of *United States Reports* in his hands, which is not apparent years later to several Justices of the Supreme Court. At least in cases of this sort, where, in contrast to confessions of dubious reliability, the evidence cannot impair any proper defense on the merits, the object of deterrence would be sufficiently achieved if the police were denied the fruit of activity intentionally or flagrantly illegal—where there was no reasonable cause to believe there was reasonable cause.
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> H. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 California Law Review, 929, 952 (October, 1965).

weapon that could unexpectedly and fatally be used against him." *Terry* v. *Ohio, supra,* at 23.

We agree with the Connecticut Supreme Court and with the District Judge that here the arrest of Williams was valid.[3] The search incident to the arrest accordingly was lawful and the weapons and the narcotics were correctly received in evidence against Williams.

III.

Appellant contends that he had been denied a speedy trial. Following appellant's arrest on October 30, 1966, there were various pre-trial motions after which the appellant was bound over from the lower court to the Superior Court. On March 20, 1967 appellant's counsel, for the first time, made an oral motion for early trial. The case was at once assigned for trial on April 4, 1967, and following trial, the judgment appealed from was rendered on April 28, 1967. We find no merit in this contention.[4]

IV.

Appellant's argument concerning nondisclosure of the "informant" must fall. He developed no compliance with criteria such as had been set forth in *Roviaro* v. *United States,* 353 U.S. 53, 61 (1957). There was no indication of

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3 See, generally, *United States* v. *Thompson,* 420 F.2d 536, 540-541 (3 Cir. 1970); *Klingler* v. *United States,* 409 F.2d 299, 302-307 (8 Cir.), *cert. denied,* 396 U.S. 859 (1969); cf. *Chambers* v. *Maroney,* 399 U.S. 42, 51 (1970) and *United States* v. *Gorman,* 355 F.2d 151, 154-155 (2 Cir. 1965).

4 *United States* v. *DeLeo,* 422 F.2d 487, 493, 496 (1 Cir.), *cert. denied,* 397 U.S. 1037 (1970); *United States ex rel. Solomon* v. *Mancusi,* 412 F.2d 88 (2 Cir.), *cert. denied,* 396 U.S. 936 (1969); *United States* v. *Maxwell,* 383 F.2d 437, 441 (2 Cir. 1967) and *United States* v. *Fay,* 313 F.2d 620, 623 (2 Cir. 1963).

how the informant's testimony could help establish this appellant's innocence. *Rugendorf* v. *United States*, 376 U.S. 528, 535 (1964). The Court has never "approached the formulation of a federal evidentiary rule of compulsory disclosure where the issue is the primary one of probable cause, and guilt or innocence is not at stake." *McCray* v. *Illinois*, 386 U.S. 300, 308-311 (1967). Surely there is no absolute rule in any event as to these situations, and under the circumstances of this case, no error has been made to appear.

Affirmed.*

FRIENDLY, *Circuit Judge* (dissenting):

As this case was argued both in the district court and on appeal, Connecticut sought to validate the police sergeant's actions solely on the basis of "stop and frisk." Eschewing the argument that Officer Connolly had probable cause for arrest, it contended that he did have enough cause to make it reasonable to demand that Williams open the door of the car.[1] Once that proposition was established, the State's argument continued, quite logically, as follows:

(1) Since leaving Williams in the car without immediate removal of the gun would have exposed the officer to danger, he was justified in reaching into Williams' waistband and taking the gun without attempting to "pat," a course impracticable under the circumstances;

(2) Having found the gun, the officer had reasonable grounds for arresting Williams, since persons reputedly

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* The Court is indebted to Edward F. Hennessey, Esquire, of Hartford who without remuneration has so earnestly and diligently represented the appellant.

1 The State does not contend that Williams' action was voluntary.

engaged in the narcotics traffic do not ordinarily have gun permits; and

(3) Since the arrest was thus valid, the search was reasonable, at least under pre-*Chimel* law.

My difficulty was, and is, not with these three steps but with the premise underlying them, namely, that Officer Connolly had "constitutional grounds to insist on an encounter, to make a *forcible* stop," *Terry* v. *Ohio*, 392 U.S. 1, 32 (concurring opinion of Harlan, *J.*).[2]

As I read my brother Danaher's opinion, he believes that when Connolly approached Williams' car, the officer had sufficient cause not simply for a stop but for an arrest. I cannot agree. The officer's own observation—nothing more than seeing a man sitting alone in a car at 2:15 A.M. in a "high-crime" area—fell far short of what the Court held insufficient in *Henry* v. *United States*, 361 U.S. 98 (1959), which also involved the arrest of occupants of an automobile. Almost everything must therefore turn on what the unnamed informer said, and the value of his statement does not approach the requirements laid down in the three Supreme Court decisions which establish the constitutional parameters in this area. These are *Draper* v. *United States*, 358 U.S. 307 (1959), where the combination of information and observation was held sufficient for a warrantless arrest, and *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969), where affidavits for search warrants were held insufficient. In contrast to the

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2 It seems clear that this is the threshold issue. I do not read the Chief Justice's opinion as holding otherwise, although, as Mr. Justice Harlan indicated, 392 U.S. at 32, the thought may not have been "fully expressed." If the initial intrusion is justified, the privilege of the officer to take reasonable steps believed in good faith to be necessary for his own safety scarcely requires argument.

named informer in *Draper*,[3] a "special employee" of the Narcotics Bureau who had given reliable information about narcotics for six months, the only basis for Officer Connolly's belief in the unnamed informer here was that on one prior occasion the latter had given information about homosexual activity at the Bridgeport Railroad Station, which, however, was never substantiated and did not lead to an arrest. While the officer's explanation that the suspect in the station desisted because he saw the police coming may be reasonable enough, the episode, even if it had turned out more successfully for the police, would scarcely establish the informer as an authority on narcotics or guns. In addition, the informer in *Draper* had provided a detailed description of the scenario which the suspect later performed, thus making the report one that, in the language of *Spinelli*, 393 U.S. at 417-18, "was of the sort which in common experience may be recognized as having been obtained in a reliable way." By contrast, the informer here, assuming he existed,[4] related a single fact with no indication of how he had come upon it. The inarticulate premise for the reliability of this scant information, namely, that no one could have stated such a fact unless he had personally observed it, is precisely the view that *Aguilar*, 378 U.S. at 113-14, and *Spinelli*, 393 U.S. at 416-17, rejected. It is as true here as in *Spinelli*, 393 U.S. at 417, that "this meagre report could easily have been obtained from an off-hand remark heard at a neighborhood bar,"[5] and there

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3 Named doubtless because he had died within a few days after the arrest.

4 It is cause for no small wonder that on the first suppression hearing, Officer Connolly never mentioned the informer but said he had responded to a police signal. In the subsequent hearing the informer appeared and the signal disappeared. See note 9 *infra*.

5 The majority opinion urges against this that because the alleged informant was allegedly across the street, he should be regarded as

was less, in fact nothing, in the way of meaningful corroboration by police investigation before the intrusion. I therefore turn to what I regard as the serious and doubtful issue whether, despite the absence of probable cause for arrest, Officer Connolly was nonetheless justified under *Terry* v. *Ohio, supra,* 392 U.S. 1, in demanding that Williams open the door of the car.

It has been well said that *Terry* and the two other cases decided with it, *Sibron* v. *New York* and *Peters* v. *New York,* 392 U.S. 4 (1968), constitute "the Court's first word —but certainly not its last—on the subject of stop and frisk . . . . [T]his was the Court's first foray into this particular thicket, and it is thus understandable that it made a conscious effort to leave sufficient room for later movement in almost any direction." La Fave, "Street Encounters" and the Constitution, 67 Mich. L. Rev. 39, 46 (1968). Of the three decisions, only in *Terry* did a majority of the Court sustain a stop and protective search where there had been less than probable cause for arrest.[6] The Chief Justice was at pains to make clear the limited character of the holding, when he said in the concluding paragraph of his opinion, 392 U.S. at 30-31: "We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience

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an "eye-witness" and cites *McCreary* v. *Sigler,* 406 F.2d 1264, 1269 (8 Cir. 1969), and *United States* v. *Acarino,* 408 F.2d 512, 514 (2 Cir.), *cert. denied,* 395 U.S. 961 (1969), in support. In *McCreary,* the informant gave a detailed affidavit of his observations including the fact that he had seen McCreary in the phone booth whence the coin box was stolen and heard coins rattling. In *Acarino* the informer had given a detailed scenario á la *Draper.* Here the implicit assumption that the informer had been with Williams in the car or saw him enter it is sheer speculation.

6 The search in *Sibron* was held unlawful because the officer was seeking to find narcotics rather than to protect his own safety; in *Peters* the majority found there was probable cause for arrest.

that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous," he may make a stop and conduct a protective search under the conditions there defined.

The instant case differs from *Terry* in important respects. Officer Connolly himself observed no "unusual conduct" leading him "reasonably to conclude . . . that criminal activity may be afoot"—unless we are to say that the mere fact of Williams' sitting alone in an automobile at 2:15 A.M. in a "high-crime" area is so inherently suspicious as to justify such a conclusion—a view I would deem exceedingly dangerous. The officer's only basis for believing that Williams may have been committing a crime was the alleged tip from the not proved to be reliable, unnamed informer. See 19 Buffalo L. Rev. 680, 685-86 (1970). Moreover, what Officer McFadden saw in *Terry* was "unusual conduct" giving reason to believe that armed robbery was about to be committed; swift intervention on his part was required to prevent a serious crime of violence. Here, while Officer Connolly could well have thought that Williams would not possess the gun and narcotics mentioned by the informer merely for pleasure, he could not have believed that sale of the narcotics or use of the gun was imminent, and the record suggests that the officer had ample means for placing Williams under surveillance. See, in this connection, Mr. Justice Harlan's concurring opinion in *Sibron*, 392 U.S. at 73.

The question thus becomes whether, even though the decisions of the Supreme Court of Connecticut and the district court in this case go beyond the facts of *Terry* and the narrow statement of its holding, they are nevertheless within its rationale. This seems to lie in the passages, 392 U.S. at 26-27, where the Chief Justice explained

that, in contrast to an arrest, "the protective search for weapons . . . constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person"; that, because of the lesser nature of th intrusion, a smaller showing of cause may suffice; and that Terry's "reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced." A further signal that the Court was thus adopting a test balancing the amount of cause required to be shown against the extent of the particular invasion of personal security was given by the citation of *Camera* v. *Municipal Court*, 387 U.S. 523, 534-37 (1967). See LaFave, *supra*, 67 Mich. L. Rev. at 54-56; Hall, Kamisar, LaFave and Israel, Modern Criminal Procedure 324-26 (1969).

The Court's decision that less may be required to justify a stop and a protective search than an arrest and a search incidental thereto leaves many open questions. How much less is enough? Does something depend upon the seriousness of the offense?[7] Cf. *Brinegar* v. *United States*, 338 U.S. 160, 183 (1949) (dissenting opinion of Mr. Justice Jackson). What favor, if any, should be shown to intervention aimed at preventing crime rather than detecting it? Cf. LaFave, *supra*, 67 Mich. L. Rev. at 66; 82 Harv. L. Rev. 178, 182 (1968). Do not such factors enter into an appraisal of what the Court evidently regarded as one significant test—whether failure to take immediate action

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7 As said in LaFave, *supra*, 67 Mich. L. Rev. at 57:

> Taking into account the seriousness of the offense does not require the use of some fine-spun theory whereby each offense in the criminal code has its own probable-cause standard; rather, it involves only the common-sense notion that murder, rape, armed robbery, and the like call for a somewhat different police response than, say, gambling, prostitution, or possession of narcotics.

would be "poor police work"? 392 U.S. at 23. While almost everyone would agree it would have been "poor police work" for Officer McFadden to have failed to take action to foil an armed robbery by Terry and his confederates, many would think Officer Connolly would have done well enough to report what he allegedly had been told and the little he had seen.

Only future decisions by the Supreme Court can answer these and other questions. Striking the balance here as best I can in light of the few guidelines thus far available, I would hold the State had not shown sufficient cause to justify a forcible stop:

To begin, I have the gravest hesitancy in extending *Terry* to crimes like the possession of narcotics, see LaFave, *supra*, 67 Mich. L. Rev. at 65-66. There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true. Against that we have here the added fact of the report that Williams had a gun on his person. I would follow Mr. Justice Harlan in thinking that "if the State . . . were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, . . . action taken pursuant to such authority could be constitutionally reasonable." *Terry* v. *Ohio*, *supra*, 392 U.S. at 31. But, as in *Terry*, the State here has done nothing of the sort. Connecticut allows its citizens to carry weapons, concealed or otherwise, at will, provided only they have a permit, Conn. Gen. Stat. §§29-35 and 29-38, and gives its police officers no special authority to stop for the purpose of determining whether the citizen has one. Indeed, as my analysis of the State's argument shows, the narcotics and

the gun are inseparably linked; it is the report about narcotics on which the State pins reasonable cause to arrest for illegal possession of a gun.

If I am wrong in thinking that *Terry* should not be applied at all to mere possessory offenses, and a dictum in *Sibron*, 392 U.S. at 63, indicates that I may be, I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a threefold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former. Narcotics Agent Marsh would hardly have been at the Denver Station at the exact moment of the arrival of the train Draper had taken from Chicago unless *someone* had told him *something* important, although the agent might later have embroidered the details to fit the observed facts. Cf. *United States* v. *Camissiong*, 429 F.2d 834 (2 Cir. 1970). There is no such guarantee of a patrolling officer's veracity when he testifies to a "tip" from an unnamed informer saying no more than that the officer will find a gun and narcotics on a man across the street,[8] as he later does. If the state wishes to rely on a tip of that

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8 While the findings of the Connecticut courts and the district court preclude our holding that the unnamed informer did not exist in this case, we can take the danger of fabrication into account in framing a general rule.

nature to validate a stop and frisk, revelation of the name of the informer or demonstration that his name is unknown and could not reasonably have been ascertained should be the price."

Terry v. *Ohio* was intended to free a police officer from the rigidity of a rule that would prevent his doing anything to a man reasonably suspected of being about to commit or having just committed a crime of violence, no matter how grave the problem or impelling the need for swift action, unless the officer had what a court would later determine to be probable cause for arrest. It was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessory offenses. If it is to be extended to the latter at all, this should be only where observation by the officer himself or well-authenticated information shows "that criminal activity may be afoot."

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9. The State's claim that Williams failed previously to raise this point is without foundation. At the first hearing on Williams' motion to suppress evidence, Officer Connolly testified he was in a radio car and responded to a police signal directing him to go to the Williams car. No mention of an informant was made at that time. After Williams was bound over to the Fairfield County Superior Court, a second hearing was held and the officer testified that while on patrol he met an undisclosed informant who told him that Williams was in the car with drugs and a gun. Williams' attorney asked who the informant was, but the state objected, the court sustained the objection, and Williams' attorney took an exception. Again, in his amended and second amended petitions for habeas corpus presented to the Superior Court for Hartford County, Williams claimed his conviction was illegal since his "right of confrontation and due process rights were violated by reason of the Court's failure to permit inquiry as to the identity of the police informant upon whose information the probable cause was claimed." Finally, in the Claims of Law which Williams submitted to support his federal habeas corpus petition, he mentioned that he had sought to elicit the identity of the informant but was not permitted to do so; he alleges also that at the federal habeas hearing the judge sustained an objection to questions on the informant's identity.

Appendix B

392 U.S. at 30. I greatly fear that if the decision here should be followed, *Terry* will have opened the sluice-gates for serious and unintended erosion of the protection of the Fourth Amendment.

I would grant the writ.

APPENDIX C

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 13,428

ROBERT WILLIAMS,

Petitioner,

v.

FREDERICK E. ADAMS, Warden, Connecticut State Prison,

Respondent.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, a state prisoner, has brought this application for a writ of habeas corpus claiming that the evidence used against him in his state court trial and conviction was the product of an illegal search and seizure and that he was denied the right to a speedy trial. He represents that timely motions to suppress the evidence were made, both at the preliminary hearing in the state circuit court and in the superior court, and that all state remedies on the issues raised have been exhausted. *State* v. *Williams,* 157 Conn. 114 (1968); and the Court so finds. Because of a conflict in the evidential record educed at the two aforesaid state court hearings, relating to the arresting officer's justification for making the challenged search and seizures, it was necessary that this hearing be held to ascertain the true facts. *Townsend* v. *Sain,* 372 U. S. 293, 313 (1963). Therefore, the Court appointed counsel and approved the petitioner's application to proceed in forma pauperis.

Appendix C

Petitioner was convicted of violating Connecticut General Statutes § 19-246, possession of narcotics, § 29-35, carrying a pistol on his person without a warrant and § 29-38, having a weapon in a vehicle. On the night of his arrest, he was seated alone in an automobile in a high crime area of Bridgeport, Connecticut at 2:15 on a Sunday morning. The arresting officer, acting on speedy information furnished by a reliable informant, that Williams had a gun in his belt and narcotics on his person, went to the car to investigate. The policeman asked him to open the door and Williams responded by rolling down the window. The officer immediately reached inside the car and removed a fully loaded pistol from Williams' waistband. He then placed Williams under arrest and conducted a further search of his person and of the automobile. This search produced several packets of a substance which later proved to be heroin taken from his person, a machete was found under the front seat of the car and a second pistol in the trunk. The conviction § 29-38, Conn. Gen. Stat., involved only his possession of the machete.

The conflict in the evidential record, which required this Court to grant a hearing, revolved around the source of the information upon which the police officer had relied in making his seizure of the first pistol. The record of the proceedings on the first motion to suppress in the state circuit court indicates that the officer was responding to some kind of a "signal" or "call" of unspecified origin. In the state superior court the testimony of the officer was that the information was transmitted to him by a person whom he met within view of the petitioner's automobile and who was known to him and considered by him to be trustworthy and reliable. This conclusion of trustworthiness was based, in part, on the fact that on at least one prior occasion this informant had supplied reliable information regarding criminal activities. Although this pre-

vious information did not lead to an arrest the officer was convinced that it was correct and that the only reason no arrest resulted was that the suspects saw the officer and ceased their criminal conduct.

At this Court's hearing the facts as they appear in the superior court record were substantiated and using them as the findings of this Court, petitioner's motion for habeas corpus is denied.

The ruling on this motion, as to the search and seizure issue, turns on the propriety of the officer's actions in reaching into the car and removing the pistol from the petitioner. The test to be applied is as follows:

> "(T)he conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures . . . .
>
> "In order to assess the reasonableness of (the officer's) conduct as a general proposition, it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.' *Camara* v. *Municipal Court*, 387 U. S. 523, 534-535, 536-537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry* v. *Ohio*, 392 U. S. 1, 20-21 (1968).

The governmental interest at work in *Terry*, and in the case at bar, is the interest of the policeman in protecting himself and others in situations where probable cause for arrest is lacking. (It appears clear on these facts that

under § 6-49, Conn. Gen. Stat., as construed in *State* v. *Carroll,* 131 Conn. 224, providing for arrest on "speedy information" that where a crime has been or is being committed, that Williams might have been properly arrested and all searches been properly conducted incident thereto. *State* v. *Williams,* 157 Conn. 114, 118 (1968). The state, however, has not chosen to rely on this statute but rather on the "protective search" theory of *Terry* v. *Ohio, supra*).

In weighing the above need, the justification for the invasion must be considered. A mere "hunch" on the officer's part, even if in good faith, is insufficient. *Beck* v. *Ohio,* 379 U. S. 89, 96-97 (1964). Rather, the officer must be justified in believing that the person upon whom the intrusion is imposed is armed and presently dangerous to the officer or others. *Terry* v. *Ohio, supra* at 24. If such is the case "it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Id.*

In the present case such justification existed, Petitioner was alone in an automobile in the early morning hours in a high crime area. While this in itself might be sufficient to raise an alert officer's suspicions, it probably, would be insufficient to justify a search. Here, however, the officer was primarily relying on information given him by a reliable informant, who had pointed out the location of the car and its occupant within visible distance of its location. This combination of circumstances was sufficient to empower the officer to constitutionally "take necessary measures to determine" if the party to observed was armed and therefore potentially dangerous.

Once some sort of action is found to be constitutionally permissible it must next be determined ". . . the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable

cause to arrest for crime is lacking." *Terry* v. *Ohio, supra,* at 24. Thus the question is what type of search would be reasonable in the circumstances as herein presented.

> "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Terry* v. *Ohio, supra* at 29.

In *Terry* the search, which the Supreme Court upheld and which it characterized as one in which the officer "confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons," *Terry* v. *Ohio, supra* at 30, consisted of the patting down of the outer garments of the suspects and only reaching inside said garments to remove suspicious objects. In *Sibron* v. *New York*, 392 U. S. 40 (1968), a case decided the same day as was *Terry*, the Court attempted to distinguish a search where probable cause for arrest was lacking. Petitioner cites *Sibron* and quotes therefrom the following passage as supporting his position.

> "The search for weapons approved in *Terry* consisted solely of a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault. Only when he discovered such objects did the officer in *Terry* place his hands in the pockets of the men he searched. In this case, with no attempt at an initial limited exploration for arms, Patrolman Martin thrust his hand into Sibron's pocket and took from him envelopes of heroin."

Petitioner analogizes the search in *Sibron* with the officer's action here of thrusting his hand inside the automobile and

partially under his coat to remove the gun. The cause, however, are clearly distinguishable, as is apparent from the language of the Court immediately following the above quoted passage which appeared in petitioner's brief.

> "His (Patrolman Martin's) testimony shows that he was looking for narcotics, and he found them. The search was not reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man. Such a search violates the guarantee of the Fourth Amendment, which protects the sanctity of the person against unreasonable intrusions on the part of all governmental agents." *Sibron* v. *New York, supra* at 65-66.

Other distinguishing facts in *Sibron* are that the arresting officer there had no reasonable grounds to suspect that Sibron was involved in any criminal activity nor did he believe him to be armed.

The test remains, was the officer's action reasonable under all the circumstances. While the Supreme Court in both *Terry* and *Sibron* expressed approval of searches of this type consisting of a patting down of the suspect's outer clothing it did not limit its approval to that type of search. Indeed, such a search would have been impractical here. The officer's information was that Williams had a gun in the waistband of his pants. This could not have been verified by a pat-down search due to the fact that the suspect was seated in a car. In view of the darkness of the hour, rendering it impossible for the officer to see inside the car, it is too much to require that he stand beside it while its occupant, whom he had reason to believe had a gun in an easily accessible position, alights. This exposes the officer to the unreasonable risk that in the

process of getting out of the car the suspect may draw his gun and fire on him. Rather, the officer did the only thing reasonably calculated to protect himself by restricting his search to the immediate area of the suspect's person where he had reason to believe a weapon might be located. The fact that this required him to reach partially under the suspect's coat in extracting the gun does not make his actions any less reasonable in light of all the circumstances. As was the case in *Terry*, the officer here "confined his search strictly to what was minimally necessary to learn whether the (man was) armed and to disarm (him) once he discovered the (weapon)." *Terry* v. *Ohio*, *supra* at 30.

Once the officer found the gun and placed Williams under arrest, the remainder of his search was incident thereto. The only portion of this latter search which might be argued to have surpassed the boundaries set forth in *Chimel* v. *California*, 395 U. S. 752 (1969), was the search of the car's trunk, during which the second gun was found. This defect, if it was one, is cured by the fact that this second gun did not result in any further criminal charges. Thus, the petitioner was in no way subjected to an unreasonable search or seizure.

Petitioner also seeks release by alleging he was denied a speedy trial in contravention of the Sixth Amendment. A brief statement of the facts upon which this claim is grounded will be helpful. Williams was arrested on October 30, 1966. The next day he was presented in circuit court where the presiding judge appraised him of his constitutional rights. The case was then continued until November 3, 1966 at which time a public defender was appointed to represent him. The case was then continued until December 8, 1966 to await the state's toxicological examination on the white powder found on Williams at the time of his arrest. On December 8, 1966, he plead not guilty to all charges and various motions were made by his attorney. These motions were heard on December 22,

1966 and at that time the court found probable cause and Williams was bound over to the January, 1967 term of the superior court. On February 2, 1967, a special public defender was appointed and it was not until March 20, 1967, that he made an oral motion for a speedy trial. No other motion for a speedy trial was ever made. The trial began on April 4, 1967.

The Sixth Amendment, guaranteeing the right to a speedy trial was made applicable to the states by virtue of the Fourteenth Amendment, in *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967). Although the Sixth Amendment has only recently been applied to the states, its scope has been developed in a series of criminal cases wherein the United States was a party.

> "This guarantee is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself. However, in large measure because of the many procedural safeguards provided an accused, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself. Therefore, this Court has consistently been of the view that 'The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.' *Beavers* v. *Haubert*, 198 U. S. 77, 87. 'Whether delay in completing a prosecution . . . . amounts to an unconstitutional deprivation of rights depends upon the circumstances. . . . The delay must not be purposeful

> or oppressive,' *Pollard* v. *United States*, 352 U. S. 354, 361. '(T)he essential ingredient is orderly expedition and not mere speed.' *Smith* v. *United States*, 360 U. S. 1, 10." *United States* v. *Ewell*, 383 U. S. 116, 120 (1966).

There is no substance to the claim that the state acted with other than "orderly expedition" in the prosecution of this matter. Nor has the petitioner been shown to have been prejudiced in any way by the allegedly undue delay on the part of the state. Thus, no Sixth Amendment violation is present. See *United States* v. *Simmons*, 338 F. 2d 804 (2d Cir. 1964); *United States ex rel. Von Cseh* v. *Fay*, 313 F. 2d 620 (2d Cir. 1963).

The writ of habeas corpus is denied and dismissed. So ORDERED.

The Court expresses its appreciation to Edward F. Hennessey, Esquire, of Hartford, who has so ably represented the petitioner in this proceeding, without benefit of any professional fee or remuneration.

Dated at Hartford, Connecticut, this 5th day of January, 1970.

T. EMMET CLARIE
United States District Judge

Adams v. Williams No. 70-283

APPENDIX D

STATE OF CONNECTICUT *v.* ROBERT WILLIAMS

KING, C. J., ALCORN, HOUSE, THIM and RYAN, Js.

As a matter of common law, when a police officer is justified in believing that the person whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

Neither the state nor the federal constitution forbids searches and seizures but only unreasonable searches and seizures. The reasonableness of a search is, in the first instance, a determination to be made by the trial court from the facts and circumstances of the case.

A police officer, in the line of his assigned duty and in the small hours of the morning, was told by a person he considered reliable that an automobile which was pointed out to him was occupied by a man carrying narcotics and armed with a pistol at his waist. In the vehicle, parked on a public street in a high crime area, the defendant was seated on the passenger's side of the front seat. When told to open the door, the defendant rolled down the window and the officer reached in and grabbed a loaded revolver from the waistband of the defendant's trousers. *Held:*

1. The officer's action in taking the revolver from the defendant was a reasonable search and seizure.
2. The arrest which followed was justified not only by the legal search and seizure but by the statute (§ 6-49) providing that a police officer shall arrest without a warrant any person apprehended on the speedy information of others.

State v. Williams

In the Connecticut constitution, the provision for a speedy trial means that the state must proceed without unreasonable or undue delay. Each situation must be judged on the facts of the particular case; a delay may be waived, and waiver may be implied when the defendant does not object to delay. The defendant was arrested on October 30. The only motion for trial was made the following February 2 by the defendant's special public defender; trial was held April 4; and judgment was rendered April 28. Nothing in the circumstances of the case could be said to amount to the denial of a speedy trial.

Claimed mistreatment of an accused prior to trial is not a ground for attacking, on appeal, a judgment rendered within the limits of the statute punishing the offense. Consequently, the defendant's claim of cruel and unusual punishment in that while he was in jail he was denied proper medication and was unable, because of his condition, to eat some of the food provided for him was without merit.

Argued October 3—decided October 29, 1968

Information, in three counts, charging the defendant with the crimes of violation of the Uniform State Narcotic Drug Act, of carrying a pistol without a permit, and of having weapons in a vehicle, brought to the Superior Court in Fairfield County and tried to the court, *Radin, J.*; judgment of guilty on all three counts and appeal by the defendant. *No error.*

Bernard Green, special public defender, for the appellant (defendant).

Donald W. Browne, assistant state's attorney, with whom, on the brief, was *Otto J. Saur,* state's attorney, for the appellee (state).

ALCORN, J. The defendant was charged with having narcotic drugs in his control in violation of § 19-246 of the General Statutes, with carrying a pistol on his person without a permit in violation

of § 29-35 of the General Statutes, and with knowingly having a weapon in a vehicle owned, operated or occupied by him in violation of § 29-38 of the General Statutes. After a trial to the court, he was convicted on all three counts and has appealed from the judgment.

The claims on the appeal are that he was subjected to an illegal search and seizure of weapons, narcotics and implements for the administration of narcotics, that he was denied a speedy trial, and that he was subjected to cruel and unusual punishment.

At 2:15 on a Sunday morning, a sergeant of the Bridgeport police department was patrolling alone in a section of Bridgeport noted for its high incidence of crimes of various kinds. There he met a person known to him and considered by him to be trustworthy and reliable who pointed to an automobile parked on the other side of the street and told him that a person seated in the vehicle was armed with a pistol at his waist and had narcotics in his possession. The defendant was the occupant of this automobile and was seated on the passenger's side of the front seat. The sergeant walked across the street, tapped on the window of the automobile and told the defendant to open the door. The defendant rolled down the window of the door, and the sergeant immediately reached directly to the defendant's waistband and removed a fully loaded, .32-caliber revolver from the waistband of the defendant's trousers. He thereupon arrested the defendant, and thereafter a search was made of the defendant and the automobile. The search disclosed another revolver in the trunk of the car, a machete under the front seat, twenty-one cellophane packets containing a white substance in the defendant's

wallet and six similar packets in a jar in the defendant's right-hand coat pocket. Later tests of ten of the cellophane packets established that they contained heroin. In addition, the police found, in the defendant's hat, a hypodermic needle and other paraphernalia used in administering narcotics.

The claim is that the action of the police officer in taking the loaded revolver from the waistband of the defendant's trousers was an illegal search since it was done without a search warrant and was not incidental to a lawful arrest owing to the fact that the officer had neither an arrest warrant nor grounds for making an arrest without a warrant. The defendant's argument relies primarily on a claimed failure of the state to demonstrate the reliability of the officer's informant, in the light of cases such as *McCray* v. *Illinois*, 386 U.S. 300, 87 S. Ct. 1056, 18 L. Ed. 2d 62, rehearing denied, 386 U.S. 1042, 87 S. Ct. 1474, 18 L. Ed. 2d 616; *Beck* v. *Ohio*, 379 U.S. 89, 85 S. Ct. 223, 13 L. Ed. 2d 142; *Aguilar* v. *Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723; and *Draper* v. *United States*, 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327. The defendant then proceeds to argue that, since the original seizure of the loaded revolver was illegal, it was not a valid basis for the arrest which followed and that the subsequent search must necessarily be invalidated because it was not incident to a legal arrest.

The argument is not persuasive. The defendant does not suggest what alternative course he thinks the officer should have followed upon receipt of the information given to him. The situation called for quick decision and prompt action. The officer, in the line of his assigned duty and in the small hours of the morning, was told by a person he considered reliable that an automobile which was pointed out to

him was then occupied by an armed man carrying narcotics. The vehicle was parked, for no apparent reason, on a public street in a high crime area. Under those circumstances, the officer exhibited not only a correct sense of duty but commendable personal courage in walking, single-handed, across the street to confront an armed man in that locality and in the dark of the night. The arrest which followed clearly was justifiable under the "speedy information" provision in § 6-49 of the General Statutes, as construed in *State* v. *Carroll*, 131 Conn. 224, 231, 38 A.2d 798.

Under the circumstances disclosed, the action of the officer was fully justified, however, quite aside from any authority given him by § 6-49.

Neither the state nor the federal constitution forbids searches and seizures. They forbid only unreasonable searches and seizures. *State* v. *Collins*, 150 Conn. 488, 492, 191 A.2d 253. The reasonableness of a search is, in the first instance, a determination to be made by the trial court from the facts and circumstances of the case. *Ker* v. *California*, 374 U.S. 23, 33, 83 S. Ct. 1623, 10 L. Ed. 2d 726; *State* v. *Mariano*, 152 Conn. 85, 93, 203 A.2d 305, cert. denied, 380 U.S. 943, 85 S. Ct. 1025, 13 L. Ed. 2d 962.

We are in accord with the proposition that, as a matter of common law, "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Terry* v. *Ohio*, 392 U.S. 1, 24, 88

S. Ct. 1868, 20 L. Ed. 2d 889. The officer "did not conduct a general exploratory search for whatever evidence of criminal activity he might find." *Terry* v. *Ohio*, supra, 30. He merely reached in the car and grabbed the loaded revolver from the place where his informant had said it would be. We hold that, under the constitution of Connecticut as well as under the federal constitution, this action did not, under the circumstances, amount to an unreasonable search and seizure. In fact, the claimed "search" was far less extensive than that found reasonable in the *Terry* case. There is no claim that, if the seizure of the loaded revolver was legal, the arrest which followed, or the search incident to it, was illegal. The claim that the defendant was subjected to an illegal search and seizure is without merit.

The defendant was arrested on October 30, 1966. On the next day, he was presented in the Circuit Court and was advised of his constitutional rights, and his case was continued until November 3, 1966. On the latter date, a public defender was appointed to represent him, and his case was continued for five days, at which time his bond was reduced to an amount which is not claimed to have been excessive. From then until December 8, 1966, the case awaited the results of a laboratory analysis of the white powder which had been found on his person, and, during the interim, several conversations took place between his counsel and the prosecuting attorney. On December 8, 1966, the defendant was presented for plea in the Circuit Court, when various motions were filed by his counsel which were heard on December 22, and, on that date, the defendant was bound over to the January, 1967, term of the Superior Court. That court was continuously and fully

engaged in disposing of criminal cases from the opening of the term until, on March 20, 1967, the defendant's special public defender, who had been appointed on February 2, 1967, made an oral motion for a trial. No other motion for a speedy trial had been made. The case was thereupon assigned for trial on April 4, 1967, and, following the trial, the judgment appealed from was rendered on April 28, 1967.

We have interpreted the provision for a speedy trial now found in article first, § 8, of the 1965 Connecticut constitution to mean that the state must proceed without unreasonable or undue delay. *State* v. *Doucette,* 147 Conn. 95, 107, 157 A.2d 487; *Wojculewicz* v. *Cummings,* 145 Conn. 11, 21, 138 A.2d 512, cert. denied, 356 U.S. 969, 78 S. Ct. 1010, 2 L. Ed. 2d 1075; see note, 57 A.L.R.2d 302, 310, 326. Each situation must be judged on the facts of the particular case; a delay may be waived, and waiver may be implied when the defendant does not object to it. *State* v. *Hodge,* 153 Conn. 564, 569, 219 A.2d 367; *State* v. *Holloway,* 147 Conn. 22, 25, 156 A.2d 466, cert. denied, 362 U.S. 955, 80 S. Ct. 869, 4 L. Ed. 2d 872. The rule generally stated is that the prosecution is entitled to a reasonable time for preparation and the defendant is to be free from vexatious, capricious and offensive delays. 21 Am. Jur. 2d 279, Criminal Law, § 243. We find nothing in the circumstances of the present case which amounts to the denial of a speedy trial.

Finally, the defendant complains that he was subjected to cruel and unusual punishment. This claim is based on the assertion that, while the defendant was confined in jail awaiting trial and unable to furnish bail, the jail physician denied him proper medication for his claimed ailments and that, because of

his condition, he was unable to eat some of the food provided for him. There is no basis in the finding for such a claim. Furthermore, there is no claim that the statutes under which he was sentenced, or the sentence imposed by the court under the statutes, amounted to cruel and unusual punishment under the eighth amendment to the constitution of the United States which is made applicable to the states by the fourteenth amendment. *Robinson* v. *California*, 370 U.S. 660, 666, 82 S. Ct. 1417, 8 L. Ed. 2d 758, rehearing denied, 371 U.S. 905, 83 S. Ct. 202, 9 L. Ed. 2d 166. Nor does the defendant suggest in what manner the treatment complained of, before trial, could form a valid basis for a reversal of the judgment of conviction.

The defendant has cited no authority whatever for his claim. The term "punishment" has been defined as "any pain, penalty, suffering, or confinement inflicted on a person by authority of law and the judgment or sentence of a court for some crime or offense committed by him." 21 Am. Jur. 2d 542, Criminal Law, § 576. A sentence which is within the statutory limits, as this sentence was, is not, as a matter of law, cruel and unusual punishment. *State* v. *McNally*, 152 Conn. 598, 603, 211 A.2d 162, cert. denied, 382 U.S. 948, 86 S. Ct. 410, 15 L. Ed. 2d 356. Lacking any assistance from counsel on either side, we have made an independent search for authority to support a claim such as the defendant now makes. While courts have entertained claims of mistreatment of various sorts, usually made by prisoners in proceedings such as habeas corpus or for an injunction, we have found no instance in which mistreatment of the sort claimed here prior to trial has been entertained as a ground for attacking, on appeal, a judgment rendered within the limits of the

statute punishing the offense. See cases such as *Wright* v. *McMann*, 387 F.2d 519 (2d Cir.); *Heft* v. *Parker*, 258 F. Sup. 507 (M.D.Penn.); *Austin* v. *Harris*, 226 F. Sup. 304 (W.D.Mo.); *United States ex rel. Yaris* v. *Shaughnessy*, 112 F. Sup. 143 (S.D.N.Y.); *Ex parte Pickens*, 101 F. Sup. 285 (D.Alas.); *Chapman* v. *Graham*, 2 Utah 2d 156, 270 P.2d 821; *Brown* v. *State*, 152 Fla. 853, 13 So. 2d 458. Consequently, we find the claim of cruel and unusual punishment to be without merit.

There is no error.

In this opinion the other judges concurred.

MOTION FILED
DEC 15 1971

IN THE

Supreme Court of the United States

October Term, 1970

No. 70-283

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Petitioner,

against

ROBERT WILLIAMS,

Respondent.

MOTION BY THE DISTRICT ATTORNEY OF NEW YORK COUNTY TO FILE THE ANNEXED BRIEF *AMICUS CURIAE*

BRIEF OF DISTRICT ATTORNEY OF NEW YORK COUNTY, *AMICUS CURIAE,* IN SUPPORT OF A PETITION FOR CERTIORARI

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Motion by the District Attorney of New York County to File the Annexed Brief *Amicus Curiae*

Frank S. Hogan, District Attorney of New York County, respectfully moves to file the annexed brief submitted in support of the petition for certiorari to review the *en banc* ruling by the United States Court of Appeals for the Second Circuit reversing the denial of the petition for federal habeas corpus, by which the respondent sought to vacate a judgment, convicting him, after a jury trial, of the crimes of Possession of a Pistol Without a Permit, Unlawful Possession of a Weapon while Operating a Motor Vehicle, and Possession of Narcotic Drugs [Connecticut General Statutes, §§29-35, 29-38, 19-246]. The judgment was affirmed by the Supreme Court of the State of Connecticut.

The interest of *amicus* in the present case arises primarily from the fact that *amicus* is an appellant in a case presently pending in the New York Court of Appeals in which the same issue is before the court, namely, whether a policeman who, while patrolling a high crime area late at night, is alerted by an informant that a suspect, seated in a nearby automobile, is armed with a loaded revolver, may conduct a self-protective search for the weapon. See *People* v. *Brouk*, 66 M.2d 932 (App. Term, 1st Dept: 1971); *appeal pending*.

The ruling of the United States Court of Appeals, which limits the power of a policeman to make a self-protective search for weapons under *Terry* v. *Ohio*, 392 U.S. 1 (1968), in the course of controlling street crime, conflicts with

previous long-standing decisions of the New York Court of Appeals. Additionally, the ruling raises a serious question concerning the extent to which *Terry* v. *Ohio* is affected by the decision in *Spinelli* v. *United States*, 393 U.S. 410 (1969). We believe that a more complete statement of these two reasons for granting the writ—the reasons do not appear in the petition for certiorari—should be considered by this Court before it decides to review the *en banc* decision of the Court of Appeals.

Under Rule 42(4) of the Rules of this Court, *amicus*, the authorized law officer of a political subdivision of the State of New York, may file a brief in support of the petition for certiorari without obtaining the advance permission of this Court. Permission is sought in the present case, however, because, as indicated to us by the Clerk of this Court, the petition for certiorari—which is now pending—was filed in July 1971. The instant brief was not filed until today because it only recently came to the attention of this office that certiorari was being sought by the petitioner, the State's Attorney of Fairfield County, Connecticut. Consent to file the annexed brief has been obtained from counsel for the petitioner and the respondent.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County

MICHAEL R. JUVILER
HERMAN KAUFMAN
Assistant District Attorneys
Of Counsel

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BRIEF OF DISTRICT ATTORNEY OF NEW YORK COUNTY, *AMICUS CURIAE,* IN SUPPORT OF A PETITION FOR CERTIORARI

Introduction—Interest of *Amicus*

Amicus is the District Attorney of New York County, the authorized law officer of a political subdivision of the State of New York. *Amicus* files this brief in support of the petition for certiorari filed by the State's Attorney of Fairfield County, Connecticut, because the issue here recurs often in New York County—whether a policeman, who, while patrolling a high crime area late at night, is alerted by an informant that a suspect is armed with a pistol, may

conduct a limited search of the suspect for the weapon. In New York County—Manhattan—police officers are frequently called upon to take immediate action on the basis of on-the-street encounters with citizen informants, offering information about crimes in progress ostensibly committed in their presence. Indeed, *amicus* is currently the appellant in *People* v. *Bronk*, 66 Misc.2d 932 (App. Term, 1st Dept. 1971), *appeal pending*, a case in which the question raised in the present case was decided adversely to the People by the Appellate Term of the Supreme Court, First Department. In *Bronk*, leave to appeal to the Court of Appeals of New York has been granted by an associate judge of that Court, and it is expected that the appeal will be argued early in 1972.

Reasons for Granting the Writ

I

While on patrol duty alone at 2:15 a.m. in a section of Bridgeport, Connecticut, noted for its high incidence of criminal activity, Sergeant John Connolly met a person who he knew was trustworthy and reliable. The person pointed to an automobile parked across the street, telling Connolly that the occupant in the vehicle, the respondent, was carrying a pistol in his waistband and was also in possession of narcotics. Thereupon, the officer approached the automobile, and instructed the respondent to open the car door. Instead, the respondent rolled down the window of the door, and the officer then reached inside the window with his hand, removing a loaded .32 calibre revolver from the respondent's waistband. After arresting respondent for possession of a pistol without a permit, and unlawful pos-

session of a weapon while operating a motor vehicle [Connecticut General Statutes §§29-35, 29-38], Sergeant Connolly seized a machete under the front seat of the car and twenty-six glassine envelopes of heroin from the defendant's clothing and wallet. The seizure of this property resulted in a conviction from which the respondent sought habeas corpus relief.

II

Although originally affirming, by a divided court, the District Court's denial of habeas corpus, the United States Court of Appeals for the Second Circuit later ruled, six to one, in an *en banc* decision, that the introduction of the pistol and the heroin at the respondent's trial in state court was barred by the Fourth Amendment. The Court of Appeals concluded that, after speaking with his informant,

> "Sergeant Connolly had neither probable cause [to arrest respondent] nor any other sufficient cause for reaching into [respondent's] waistband, an action which led to the subsequent search of [respondent's] car and the discovery of a machete and narcotics later introduced in evidence at [respondent's] trial. See *Terry* v. *Ohio*, 392 U.S. 1, 1968; *Spinelli* v. *United States*, 393 U.S. 410 (1969); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Henry* v. *United States*, 361 U.S. 98 (1959); *Draper* v. *United States*, 358 U.S. 307 (1959)." (Petitioner's Appendix, pp. 1a-2a.)

The ruling of the Court of Appeals, which drastically curtails the power of the police officer to conduct a self-protected search for weapons, as previously authorized

by this Court in *Terry* v. *Ohio*, 392 U.S. 1 (1968), should be reviewed because the ruling conflicts irreconcilably with previous rulings not only of Connecticut courts, but of the New York Court of Appeals. In *People* v. *Taggart*, 20 N.Y. 2d 335 (1967), decided before this Court's decision in *Terry* v. *Ohio*, the New York Court of Appeals held that a police officer, after receiving an anonymous telephone tip that the defendant was carrying a loaded revolver, had a "reasonably based suspicion" that the defendant was armed, and, secondly, was entitled under the facts of the case to search the defendant for the weapon (*id.*, at 337). *See also People* v. *Arthurs*, 24 N.Y.2d 588 (1969). In *Taggart*, the detective learned from the anonymous call that a blond, blue-eyed male about 18 years old, wearing white chino-type trousers, was at a certain location and that he had a loaded .32 calibre revolver in his jacket pocket. Proceeding to the scene, the officer saw a youth, believed to fit the informant's description, standing "in the middle of" some children. *People* v. *Taggart, supra* at 337. After placing the youth against a wall, the detective removed a revolver from his pocket.

It may be noted that the presence of children at the scene was not the critical factor leading the Court to conclude that the seizure of the revolver was proper. As this Court was to later indicate in *Terry* v. *Ohio*, the Court of Appeals also expressed concern for the safety of the police officer, stating:

> "Under the circumstances, the pistol was not only a threat to [the detective's] life but to those who surrounded the defendant at the time he was stopped" (*id.*, at 341).

Further, in an earlier decision, *People* v. *Rivera*, 14 N.Y.2d 441 (1964), *cert. denied*, 379 U.S. 978 (1965), the Court of Appeals explained why prompt action was required by a police officer who, as in the present case, is told in an on-the-street encounter with a passerby that a suspect is believed to be armed:

> "If we recognize the authority of the police to stop a person and inquire concerning unusual street events we are required to recognize the hazards involved in this kind of public duty. The answer to the question propounded by the policeman may be a bullet; in any case the exposure to danger could be very great. We think the frisk is a reasonable and constitutionally permissible precaution to minimize that danger. We ought not, in deciding what is reasonable, close our eyes to the actualities of street dangers in performing this kind of public duty."

We are now told, however, that the reasoning employed by the Court of Appeals in *Rivera* and *Taggart* was incorrect; further, the Circuit Court has apparently concluded that, unless he ignored the informant's tip altogether, Sergeant Connolly was bound to make some sort of further inquiry—of either the informant or respondent—before disarming the respondent, although such a procedure would unquestionably have subjected the officer to an even greater likelihood of physical harm than is present in the ordinary street encounter.

In short, the emerging conflict between the state and federal courts concerning an issue greatly affecting the control of street crime, which is now rising at an ever increasing rate, ought to be reviewed by this Court.

III

Review is also mandated for another reason. The present case permits the Court to decide to what extent, if any, its ruling in *Terry* v. *Ohio* is affected by *Spinelli* v. *United States*, 393 U.S. 410 (1969). In *Terry*, the Court authorized a limited search for weapons

> "* * * where a police officer observes unusual conduct which leads him to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be presently armed and dangerous, * * *." *Terry* v. *Ohio, supra* at 30.

There were, however, no independent observations by Sergeant Connolly, which would have permitted him to make the type of narrowly defined search upheld in *Terry*. Connolly only saw respondent sitting in a parked car at night in a high crime area, which might not reasonably have alerted the officer that a crime was then in progress. But the officer was acting upon a tip from an informant whom Connolly encountered directly across the street from where respondent was seated in his car.

Though the six-judge majority of the Court of Appeals did not explain why the tip was insufficient to justify the removal of the revolver from respondent's waistband, the reasons for this conclusion appear in Judge Friendly's opinion dissenting from the original panel's decision affirming the denial of respondent's application for habeas corpus relief. While acknowledging that a self-protective search for weapons depends only upon a reasonable suspicion that the suspect is armed and dangerous, Judge Friendly was

unwilling to sustain the seizure of the revolver on this ground, stating:

> "I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a three-fold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former." Petitioner's Appendix B at pp. 21a.

It appears, therefore, that Judge Friendly ruled that the tip was defective because it did not comply with the two-pronged test formulated by this Court in *Spinelli* v. *United States, supra. See also Aguilar* v. *Texas,* 378 U.S. 100 (1964); *Harris* v. *United States,* 403 U.S. 573 (1971); *Draper* v. *United States,* 358 U.S. 407 (1959). *Spinelli,* it will be recalled, held that where the Government relies upon an informer to establish probable cause, two conditions must be met. It must be shown that the informant is reliable, and there must be an indication of some of the underlying circumstances from which the informant concluded that a crime is being committed. Clearly, the informant to whom Connolly spoke before the officer conducted his search was not shown to be reliable. Though the informant had previously supplied the officer with information concerning homosexual activity at the local railroad station in Bridgeport, the information never resulted in any arrests or con-

victions. *See e.g., People* v. *Hendricks*, 25 N.Y.2d 129, 134 (1969). And, as in *Aguilar* v. *Texas*, the nature of the tip was entirely conclusory, the informant having failed to specify the source of his knowledge that the respondent was armed with a weapon.

Judge Friendly's reliance upon *Spinelli* in the context of the present case raises serious questions, which this Court is now invited to review. Initially, in assessing the sufficiency of the informant's tip under *Spinelli*, Judge Friendly disregarded this Court's previous pronouncement in *Terry* v. *Ohio*, that a self-protective search for weapons, unlike a search made incident to an arrest, need not be based upon a showing of probable cause.

> "The protective search for weapons * * * constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest." *Terry* v. *Ohio*, *supra* at 26.

For, an officer who has probable cause to place a suspect under arrest may conduct a search incident to that arrest not only for weapons but also for other incriminating evidence within the suspect's immediate control. *Chimel* v. *California*, 395 U.S. 752, 763 (1969). But, as in *Terry*, the scope of Connolly's initial intrusion with respondent was far more limited than a search incident to an arrest, the officer intending merely to inspect the inside of respondent's waistband—where, according to the informant, a revolver was concealed. The search was therefore

> "reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man." *Sibron* v. *New York*, 392 U.S. 40, 65 (1968).

Yet the Court of Appeals has apparently ruled that Connolly was not privileged to make this "brief intrusion," absent proof that the tip from his informant established probable cause under *Spinelli*.

Further, *Spinelli* was primarily intended to regulate the issuance of search warrants based upon the hearsay communications. To require an applicant for a warrant to investigate the reliability of a new informant and his information may well be reasonable, since there is usually ample time for a law enforcement official to make this sort of inquiry before he decides to present his information to a magistrate. It is quite a different matter, however, to suggest that these investigatory burdens must also be assumed by a patrolling police officer, who is alerted by a passerby in the street that a person lurking nearby late at night is armed with a loaded revolver. It is simply asking too much to have expected Sergeant Connolly to have delayed taking action until he first cross-examined the informant concerning the source of his information and then gathered data demonstrating the informant's reliability. In the meantime, respondent could have easily driven off in his car, thereby negating the effect of the tip entirely.

To be sure, a limited search for weapons must be grounded upon an "articulable suspicion of a crime of

violence." *Terry* v. *Ohio, supra* at 33 (HARLAN, J., concurring). It is for this Court to decide, however, whether, in order to justify such a suspicion based upon a sudden tip received after a brief encounter with a citizen, the tip must meet the standards set forth in *Spinelli*.

We do not take any pleasure in disagreeing with a distinguished federal jurist. But it is a serious matter, where, as occurred in the present case, any appellate court substitutes its own reflective judgment for that of a high-ranking police officer, certainly more experienced in responding to criminal complaints received in the field than a member of the judiciary. While on duty in a high-crime area late at night, Sergeant Connolly unexpectedly came upon a known informant, who reported that a man in a parked car across the street was armed with a loaded revolver. Though not "reliable" under the standards required to establish probable cause, the informant was nevertheless considered trustworthy and reliable by the officer, whom the informant had previously supplied information about other crimes. Also, in appraising the substance of the tip, Connolly knew that the informant was willing to place his credibility on the line and risk an immediate confrontation with a suspect right on the scene. After weighing all of the foregoing circumstances, and after offering to jeopardize his own safety and possibly his life too, Sergeant Connolly is now told that his actions were unreasonable. And, of course, what steps should have been taken by the officer are not specified. Suffice to say, the ruling of the Court of Appeals leaves no discretion to a policeman, who, confronted with a report about a potentially dangerous crime, must make an instant

determination as to the proper course of action to pursue. Such a result was never intended by the commands of the Fourth Amendment.

Further, on the assumption that the Court of Appeals properly extended *Spinelli* to the facts at bar, *Spinelli* should be reconsidered. A plurality opinion joined in by only four members of this Court, *Spinelli* has been recently criticized and its continued vitality severely questioned by the Chief Justice in *Harris* v. *United States*, and by Justice Blackmun, who, concurring in *Harris*, opined that *Spinelli* "was wrongfully decided." *Harris* v. *United States*, *supra* at 586. The present case affords a clear opportunity for the Court to evaluate *Spinelli* further.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December, 1971

IN THE

Supreme Court of the United States

October Term, 1970

No. 70-283

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Petitioner,

against

ROBERT WILLIAMS,

Respondent.

BRIEF OF DISTRICT ATTORNEY OF NEW YORK COUNTY, *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

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BRIEF OF DISTRICT ATTORNEY OF NEW YORK COUNTY, *AMICUS CURIAE,* IN SUPPORT OF PETITIONER

Introduction—Interest of *Amicus*

Amicus is the District Attorney of New York County, the authorized law officer of a political subdivision of the State of New York. *Amicus* files this brief in support of petitioner, State's Attorney of Fairfield County, Connecticut, because the issue here recurs often in New York County—whether a policeman, who while patrolling a high crime area late at night, receives an on-the-spot complaint that a suspect is committing or has committed a crime and

is armed with a pistol, may conduct a limited search of the suspect for the weapon, absent probable cause to arrest. In New York County—Manhattan—police officers are frequently called upon to take immediate action on the basis of on-the-street encounters with citizen informants; offering information about crimes in progress ostensibly committed in their presence. See, *e.g.*, *People* v. *Bronk*, 66 Misc. 2d 932, 323 N.Y.S. 2d 135 (App. Term 1st Dept. 1971), *appeal pending*. In the ten years from 1962 through 1971, thirty New York City police officers were shot to death, four stabbed to death, while encountering suspects.* The decision of the United States Court of Appeals in this case conflicts with New York law, and disregards the reasonableness of limited self-protective actions taken by policemen in the field.

Question Presented

Whether a policeman who, while patrolling a high crime area late at night, receives an on-the-scene complaint that a suspect is carrying narcotics and is armed with a pistol, may conduct a limited search for the weapon.

Statement

Respondent, Robert Williams, was convicted after a trial in the Superior Court of Fairfield County, Connecticut, of possessing narcotic drugs [Connecticut General Statutes §19-246], carrying a pistol without a permit [Con-

* Compiled from the Annual Reports of the New York City Police Department, which were printed until 1970. Information for 1970 and 1971 supplied by the Public Affairs Office of the Police Department.

necticut General Statutes §29-35] and possessing a weapon while operating a motor vehicle [Connecticut General Statutes §29-38]. At a pre-trial hearing to determine the admissibility of the weapon and the drug, the State proved that, while on patrol duty alone at 2:15 a.m. in a section of Bridgeport, Connecticut, noted for its high incidence of crime, Sergeant John Connolly met a person whom he considered trustworthy and reliable. The person pointed to an automobile parked across the street, telling Connolly that the occupant in the vehicle, the respondent, was carrying a pistol in his waistband and was also in possession of narcotics. The officer approached the automobile, and instructed the respondent to open the car door. Instead, the respondent rolled down the window of the door, and the officer then reached inside the window with his hand, removing a loaded .32 calibre revolver from the respondent's waistband. After arresting respondent for possession of a pistol without a permit, and unlawful possession of a weapon while operating a motor vehicle, Sergeant Connolly seized a machete under the front seat of the car and twenty-six glassine envelopes of heroin from the defendant's clothing and wallet. Following a denial of his motion to suppress these items of contraband, respondent was convicted of the three charges. The conviction was affirmed by the Supreme Court of Connecticut.

Respondent then sought federal habeas corpus relief, contending that the weapon and the drugs were procured by an unlawful search and seizure. Although originally affirming, by a divided court, the District Court's denial of habeas corpus, the United States Court of Appeals for the Second Circuit later ruled, six to one, in an *en*

banc decision, that the introduction of the pistol and the heroin at respondent's trial in the State court was barred by the Fourth Amendment. The Court of Appeals concluded that, after speaking with his informant,

> "Sergeant Connolly had neither probable cause [to arrest respondent] nor any other sufficient cause for reaching into [respondent's] waistband, an action which led to the subsequent search of [respondent's] car and the discovery of a machete and narcotics later introduced in evidence at [respondent's] trial. See *Terry* v. *Ohio,* 392 U.S. 1, 1968; *Spinelli* v. *United States,* 393 U.S. 410 (1969); *Aguilar* v. *Texas,* 378 U.S. 108 (1964); *Henry* v. *United States,* 361 U.S. 98 (1959); *Draper* v. *United States,* 358 U.S. 307 (1959)." (Petitioner's Appendix, pp. 1a-2a.)

On January 11, 1972, this Court granted certiorari to review this ruling.

ARGUMENT

Having been told by a person he considered trustworthy that the respondent was carrying narcotics and had a revolver in his waistband, Sergeant Connolly acted reasonably in conducting a limited search for the weapon.

The ruling of the Court of Appeals should be reversed because it drastically and impermissibly curtails the authority of a police officer to make a self-protective search for weapons, previously authorized in *Terry* v. *Ohio,* 392 U.S. 1 (1968), while he is in the course of investigating a serious crime reported by a passerby. In *Terry* v. *Ohio,* this Court sanctioned the self-protective search

> "* * * where a police officer observes unusual conduct which leads him to believe that criminal activity

> may be afoot and that the person with whom he is dealing is presently armed and dangerous . . .'' (*id.* at 30).

In the present case, however, there were no observations by Sergeant Connolly which would have permitted him to make the narrowly defined search upheld in *Terry*. Connolly only saw the respondent sitting in a parked car late at night in a high crime area, which might not have reasonably alerted the officer that a crime was in progress. But the officer was acting upon a tip from a citizen encountered directly across the street from where respondent was seated in his car. In our view, there was even stronger ground than in *Terry* for inquiry and a self-protective search for a weapon.

The Court is called upon to decide initially under what circumstances a police officer's suspicions are reasonably aroused by information communicated to him during a street encounter with a passerby, the information, however, being inadequate to justify an arrest based upon probable cause. Specifically, after speaking to his informant, did Sergeant Connolly have ''constitutional grounds to insist on an encounter, to make a forcible stop''? *Terry* v. *Ohio*, *supra* at 32 (Harlan, J. concurring). Further, assuming that the complaint here demanded further action by Connolly, was his subsequent removal of the revolver from respondent's waistband reasonably necessary for the officer's own safety? In resolving these questions, the Court of Appeals stated merely that Connolly ''had neither probable cause to arrest Williams nor any other sufficient cause for reaching into Williams's waistband * * *'' It is unclear whether the Court decided that the complaint did not present the officer with sufficient grounds to investigate

respondent's presence at the scene, or that if an investigation was warranted, the resulting seizure of the weapon amounted to an unreasonable intrusion with respondent's privacy. Regardless of which ground the Court chose to base its holding on, both grounds are erroneous.

Hearing that respondent had narcotics in his car and was carrying a concealed weapon, Sergeant Connolly was bound to make some inquiry about the matter. For the officer to have ignored the tip entirely and permitted Williams to leave the scene unchecked would have been poor police work and, indeed, a breach of his public duty. In determining whether a police officer has acted reasonably in responding to unusual street occurrences, this Court explained in *Terry* that

> "due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry* v. *Ohio, supra* at 27.

Sergeant Connolly was not acting upon an "unparticularized hunch" here. Unlike the officer in *Terry,* he had a direct report of specific crimes. And though most street encounters bring together a citizen and a police officer who have not been previously acquainted, the man to whom Connolly spoke about the respondent was known to the officer and had previously furnished Connolly with information pertaining to other crimes occurring in Brideport. Though none of these prior tips resulted in an arrest, Connolly had nevertheless verified for himself the accuracy of this information, for he concluded that the informant was a trustworthy and reliable person. Surely, there was no reason for Connolly to dispute the honesty of the informa-

tion here. Unlike most tips delivered by professionally paid informers, the tip here was spontaneously communicated by the man after he received an unexpected visit from Connolly while the officer was patrolling his route. From this circumstance, it may be presumed that the informant was speaking as a concerned citizen, interested purely in helping the police to ferret out a crime. The tip also gained credence for another reason. In most instances in which a search or arrest is based upon a tip received from an informer, the informer is never called upon to personally confront the man whom he is accusing of a crime. *See, e.g., McCray* v. *Illinois,* 386 U.S. 300 (1967). Yet, as must have been perfectly obvious to Sergeant Connolly, the informant here was willing to remain at the scene while Connolly verified his story, thereby risking embarrassment as well as the wrath of the officer and the respondent if his information proved to be untrue.

In short, Connolly would have been negligent under the circumstances to forgo any inquiry of the respondent concerning the charges made by the informant. To have let Williams drive away undisturbed might have been to ignore the only means of apprehending a man who might later become involved in a sale of narcotics, a serious assault, or a homicide.

Since Connolly was entitled to investigate respondent, the officer's decision to remove the revolver from respondent's waistband cannot be faulted. The seizure was but a limited intrusion reasonably employed as a self-protective measure during inquiry concerning a report about two serious crimes. And the potential danger to the officer was obvious from the report itself, the complaint having specified that Williams was in possession of heroin and armed

with a concealed weapon. Further, the officer could discount the possibility that he was dealing merely with a harmless drug user. The reported presence of the weapon and the suspect's possession of an automobile, coupled with the late hour of the night, made it much more likely that Williams was a narcotics seller, perhaps waiting for a customer or supplier, plying his trade after fortifying himself with a weapon to prepare against any confrontations with patrolling police officers or robbers. In any event, Sergeant Connolly's belief that respondent was hiding a revolver inside his trousers surely justified a limited search for the weapon to eliminate the grave danger to the officer and those around him before Connolly proceeded any further with his investigation.

Nor can it be argued that the United States Constitution required Connolly to have prefaced his search by perhaps making some preliminary inquiry of the respondent. This course of action would have been ill-advised, or an experienced police officer could have thought so, for it might have subjected the officer to an even greater likelihood of harm than normally present in the usual street encounter.

> "If we recognize the authority of the people to stop a person and inquire concerning unusual street events we are required to recognize the hazards involved in this kind of public duty. The answer to the question propounded by the policeman may be a bullet; in any case the exposure to danger could be very great. We think the frisk is a reasonable and constitutionally permissible precaution to minimize that danger. We ought not, in deciding what is reasonable, close our eyes to the actualities of street dangers in performing this kind of public duty." *People* v.

Rivera, 14 N.Y.2d 441, 446 (1964), *cert. denied*, 379 U.S. 978 (1965). *See also Terry* v. *Ohio*, *supra* at 33 (Harlan, J., concurring).

A contrary result would require a police officer to retreat from the scene and, in effect, turn his head the other way when confronted with the type of report received here. For if it is unreasonable for an officer to attempt to disarm a suspect believed to be carrying a revolver, then the officer can hardly be expected to risk his life by making inquiry in the first instance.*

Further, the search was properly executed, it having been limited to the sole objective of discovering the whereabouts of a weapon. Initially, unlike the officer in *Terry* v. *Ohio*, Connolly did not choose to pat down the outer portions of the suspect's clothing. As a number of courts have held, however, this particular method of locating a weapon is not mandatory. *See, e.g., United States* v. *Berryhill*, 445 F.2d 1189, 1193 (9th Cir. 1971) (inspection of handbag) (*dictum*); *State* v. *Dennis*, 113 N.J. Super. 292, 273 A.2d 612, 616 (1971) (removal of suspect's hand from his pocket); *see also People* v. *Woods*, 6 Cal. App. 3d 832, 86 Cal. Rptr. 264 (1970); *cf. Tinney* v. *Wilson*, 408 F.2d 912 (8th Cir. 1969). Too, this Court acknowledged in *Terry* that the limitations upon a self-protective search "will have to be developed in the concrete factual circumstances of the individual cases." *Terry* v. *Ohio*, *supra* at 29. The Court merely held that the search must "be confined in scope to an intrusion reasonably designed to dis-

*Of the 633 police officers killed in the line of duty in United States in the ten years 1961-1970, 57 were killed while investigating suspicious persons. 175 officers were killed while attempting arrests of burglary or robbery suspects during the crime or in pursuit, and 168 while attempting other arrests. FBI 1970 UNIFORM CRIME REPORTS, pp. 44-53.

cover guns, knives, clubs, or other hidden instruments for the assault of the police officer" (*id.* at 31).

The search conducted in the present case did not violate this standard. At the time in question, Connolly was standing next to the left front door of respondent's automobile, and Williams was seated inside the vehicle at the steering wheel. Connolly had little time to calculate the most practical way to remove the weapon without interfering substantially with Williams's privacy. The pat-down type of search would have been difficult to accomplish, Williams having merely rolled down the window when he was asked to step out of the car. Indeed, while Williams's maneuver might have been innocently designed to let him hear the officer's inquiry better, it might have been calculated to prepare for an assault upon the officer, particularly if Williams had heard the officer's reasonable request that he open the door, and was ignoring it. Rebuffed, Connolly could reasonably have decided that his most prudent course was to reach inside the waistband of respondent's trousers, where, according to the complaint, the revolver was hidden. To have searched other parts of his clothing first, postponing an examination of the very spot where the deadly weapon was reported to be hidden, would have been folly. The search was therefore "reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man." *Sibron* v. *New York*, 392 U.S. 40, 65 (1968).

Numerous rulings support the foregoing views. For instance, both the New York Court of Appeals and the Supreme Court of Illinois have held that information that an armed man is roaming the streets or congregat-

ing with other people mandates an immediate search of the suspect for the weapon. This is so even if the information is transmitted from an anonymous source. Thus, in *People* v. *Taggart*, 20 N.Y.2d 335 (1967), *appeal dismissed*, 392 U.S. 667 (1968), decided before *Terry* v. *Ohio*, the New York Court of Appeals held that a police officer, after receiving an anonymous tip that the defendant was carrying a loaded revolver, had a "reasonably based suspicion" that the defendant was armed, and secondly, was entitled under the facts of the case to search the defendant for the weapon. *See also People* v. *Arthurs*, 24 N.Y.2d 588 (1969); *People* v. *Teams*, 18 N.Y.2d 835 (1966), *aff'g*, 20 A.D. 2d 803 (2d Dept. 1964). In *Taggart*, the detective learned from the telephone caller that a blond, blue-eyed male about eighteen years old, wearing white chino-type trousers, was at a certain location and that he had a loaded .32 calibre revolver in his jacket. At the scene, the officer saw a youth, believed to fit the description, standing "in the middle of" some children. *People* v. *Taggart*, *supra* at 337. The holding in *Taggart* was followed by the Supreme Court of Illinois in *In re Boykin*, 39 Ill. 2d 617, 237 N.E. 2d 460 (1968). There, an assistant principal received an anonymous tip that a student, then attending a class, was in possession of a gun. The principal summoned two policemen, assigned to the school, from their squad car, parked in front of the school building, who removed the weapon from the student's pants pocket after he was taken out of the classroom. In *Ballou* v. *Massachusetts*, 403 F.2d 982 (1st Cir. 1968), *cert. denied*, 394 U.S. 909 (1969), the Court upheld a pat-down search of the defendant on the basis of an anonymous tip that the defendant, one McLean and a third person were armed with pistols in front of a cafe, coupled with the

officer's knowledge that the defendant had been previously convicted of a weapon charge and was an associate of McLean, then the leader of a faction involved in a local "gang war."

Also in point is *Gaskins* v. *United States*, 262 A.2d 810 (D.C. Cir. 1970). In *Gaskins*, a policeman, while in the field, was stopped by a taxicab driver, who pointed to three men, indicating that he "just saw a guy up the street tuck a gun under his belt." Though the driver did not specify which of the men was armed, the Court of Appeals for the District of Columbia Circuit held that the officer properly searched all three. *See also United States* v. *Dowling*, 271 A.2d 408 (D.C. Cir. 1970); *Clarke* v. *United States*, 256 A.2d 782 (D.C. Cir. 1969); *People* v. *Lee*, 48 Ill. 2d 272, 269 N.E. 2d 488 (1971); *State* v. *D'Orsi*, 113 N.J. Super 527, 274 A.2d 586 (1971). Similarly, in *People* v. *Joslin*, 32 A.D. 2d 859 (2d Dept. 1969), after proceeding to a restaurant in response to a telephone message, a policeman was told by a waitress that she had been advised by one of the patrons that the defendant was holding a gun inside his shirt. Escorted to a room in the back of the premises, the defendant, upon being questioned about the incident, acknowledged that the charge was true. The weapon was then discovered after the defendant "made a motion towards the front of him," prompting the officer to pat down the inside of the defendant's shirt. *See also United States* v. *Unverzagt*, 424 F.2d 396 (8th Cir. 1970).

This Court has previously stated that "what the Constitution forbids is not all searches and seizures but unreasonable searches and seizures." *Elkins* v. *United States*, 364 U.S. 206 (1960). And there is no ready formula

for what is reasonable "other than by balancing the need to search against the invasion which the search entails." *Camara* v. *Municipal Court*, 387 U.S. 523, 534-5 (1967). The appellate decisions cited above represent sound applications of this rule. Permitting brief detention and a limited search on the basis of the information received in the present case is a small price to pay for the prevention of a serious crime arising out of possession of a firearm or narcotics. And it is doubtful that the lives of policemen and civilians can be balanced against the possible embarrassment and inconvenience caused by a minor intrusion with a citizen's privacy.

Though the six-judge majority of the Court of Appeals did not explain why the report and the officer's knowledge was insufficient to justify the seizure of Williams's revolver, perhaps the reasons for this conclusion appear in Judge Friendly's opinion dissenting from the original panel's decision affirming the denial of respondent's application for habeas corpus relief. While acknowledging that a self-protective search for weapons depends only upon a reasonable suspicion that a suspect is armed and dangerous, Judge Friendly was unwilling to sustain the seizure of the revolver on this ground, stating:

> "I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a three-fold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured

> by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former." Petitioner's Appendix B p. 21a.

It appears, therefore, that Judge Friendly ruled that the tip was defective because it did not comply with the two-pronged test of probable cause formulated by this Court in *Spinelli* v. *United States*, 393 U.S. 410 (1969).* *See also Aguilar* v. *Texas*, 378 U.S. 100 (1964); *Harris* v. *United States*, 403 U.S. 573 (1971); *Draper* v. *United States*, 358 U.S. 307 (1959). *Spinelli*, it will be recalled, held that where the Government relies upon an informer to establish probable cause, two conditions must be met. It must be

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* It may be noted that Judge Friendly's additional criticism pertaining to the State's failure to identify the informant is unfounded. In *McCray* v. *Illinois*, 386 U.S. 300 (1967), the Court held that where the People rely upon an informant to establish probable cause, neither the identity of the informant nor his production at a subsequent suppression hearing is required by the Fourth Amendment. We are therefore at a loss to understand why Judge Friendly would require the State to supply this information when ever a policeman's suspicions are reasonably aroused by a report about a crime furnished by a passerby whom the officer has encountered while patrolling the streets.

Judge Friendly argues, however, that *McCray* should not be followed here, apparently because of his fear that Sergeant Connolly testified untruthfully about whether he actually spoke to an informer. Suffice to say, any doubts concerning the officer's veracity could have been explored by defense counsel through cross-examination at the suppression hearing. The United States District Court found that the informer existed. Nor is the possibility of fabricated testimony by a few police officers any reason to modify the previous holding announced in *McCray*. The creation of a general rule should be responsive not to a few, but to the great majority of policemen, whom it may be presumed testify regularly to the truth. Further, if a police officer is willing to lie about the existence of an informant, it is just as reasonable to suppose that the officer would risk perjuring himself about observations of a crime. Yet the Constitution does not require corroboration of eyewitness testimony by a policeman.

shown that the informant is reliable, and there must be an indication of some of the underlying circumstances from which the informant concluded that a crime is being committed. But this test of probable cause is not the test governing the self-protective maneuver in this case. And the maneuver was reasonable, based upon the officer's information, and the setting. Arguably, the informant to whom Connolly spoke before the officer conducted his search was not shown to be "reliable" in terms of probable cause for arrest. Though the informant had previously supplied the officer with information concerning homosexual activity at the local railroad station in Bridgeport, the information never resulted in any arrests or convictions. *See e.g., People* v. *Hendricks*, 25 N.Y.2d 129, 134 (1969). And, as in *Aguilar* v. *Texas*, the tip was conclusory, the informant not having specified the source of his knowledge that the respondent was armed with a weapon.

The judge's reliance upon the decision in *Spinelli* in the context of the present case was misplaced. Initially, in assessing the sufficiency of the tip under *Spinelli*, Judge Friendly disregarded the pronouncement in *Terry* that a self-protective search for weapons, unlike a search incident to an arrest, need not be based upon a showing of probable cause. For an officer who has probable cause to make an arrest may conduct a search incident to that arrest not only for weapons but also for other incriminating evidence within the suspect's control. *Chimel* v. *California*, 395 U.S. 752, 763 (1969). As in *Terry*, however, the scope of Connolly's initial intrusion with respondent was far more limited than a search incident to an arrest, the officer intending only to inspect the inside of respondent's waistband, where he was told that the revolver would be found.

Further, *Spinelli* was primarily intended to regulate the issuance of search warrants based upon hearsay communications. To require an applicant for a search warrant to investigate the reliability of a new informant and his information may well be reasonable, since there is usually ample time for a law enforcement official to make this sort of inquiry before he decides to present his information to a magistrate, and the scope of the expected intrusion is great. It is quite a different matter, however, to suggest that these investigatory burdens must also be assumed by a patrolling police officer, alerted by a passerby in the street that a person lurking nearby is armed with a loaded revolver. Indeed, the courts are in agreement that the two-pronged test recited in *Spinelli* is to be relaxed in the context of street encounters between policemen and private citizens reporting crime. An officer has probable cause to make an arrest, the courts have held, merely if the citizen reporting a crime in the street specifies that he has witnessed or was the victim of that crime. For an eyewitness to a street crime is an inherently reliable one, thereby precluding the need to establish the witness's reliability through other independent means. *See, e.g., People* v. *Hogan,* 71 Cal.2d 888, 457 P.2d 868 (1970); *People* v. *Hoffman,* 45 Ill.2d 221, 258 N.E.2d 326 (1970), *cert. denied,* 400 U.S. 904 (1971); *State* v. *Knudson,* 51 Wis.2d 270, 187 N.W.2d 321 (1971); *McCreary* v. *Sigler,* 406 F.2d 1264, 1269 (8th Cir. 1969); *United States* v. *Acarino,* 408 F.2d 512, 514 (2d Cir.), *cert. denied,* 395 U.S. 961 (1969); *Coyne* v. *Watson,* 282 F. Supp. 235 (E.D. Ohio 1967); *cf. Gaskins* v. *United States, supra.*

Presumably, therefore, Judge Friendly would have been satisfied if Connolly's informant had uttered the magical

words, "I saw him" in possession of a weapon. Therefore, because these words were omitted, Connolly should have cross-examined the informant with respect to the source of his information before proceeding toward Williams's car.

Imposing this sort of rule, however, in such rigid fashion to the facts of this case violates the spirit of this Court's previous interpretation of the Fourth Amendment. Having been informed that an armed man was lingering in a high crime area late at night, Sergeant Connolly was faced with "exigent circumstances," which always demand a more flexible approach to the concept of reasonableness. *Warden* v. *Hayden*, 387 U.S. 294 (1967); *McDonald* v. *United States*, 335 U.S. 451 (1948). To take an example, police officers, alerted that a robber has just fled from the scene of a stick-up into his home, may enter the premises without a warrant and seize "mere evidence" linking the suspect to the crime, though the search of a dwelling is almost never sanctioned, absent the issuance of a search warrant based upon probable cause. *Warden* v. *Hayden, supra*; *Coolidge* v. *New Hampshire* 403 U.S. 443 (1971). Similarly, unannounced entry by the police into a home, though normally improper, is nevertheless reasonable if necessary to prevent the destruction of evidence. *Ker* v. *California*, 374 U.S. 23 (1963).

Though these principles were apparently ignored by the Court of Appeals, their application to the facts at bar surely vindicates the actions of Sergeant Connolly. For, under the circumstances here, it is simply asking too much to have expected the officer to have delayed his "forcible encounter" with Williams until he first ascertained how

the informant knew that Williams was armed. Perhaps Connolly declined further inquiry with the informant, sensing that respondent was preparing to flee. *Cf. People* v. *Bronk*, 66 Misc.2d 932, 323 N.Y.S.2d 135 (App. Term, 1st Dept. 1971), *appeal pending*. Or maybe he thought that continued conversation with the informant—diverting the officer's attention from Williams—would have been imprudent because Connolly was standing directly in Williams's line of fire. In any event, to this experienced officer, the information was persuasive enough, the complainant sufficiently credible, for Connolly to check it out. To be sure, another officer placed in Connolly's position might have thought it wiser to obtain a more detailed version before detaining the suspect. The contention that the latter path was required by the United States Constitution, however, is unreasonable. For, despite Judge Friendly's gratuitous observation that although Connolly could believe that the suspect had a gun, he "could not have believed that * * * the use of a gun was imminent" [Petitioner's Appendix B p. 18a], any person carrying a concealed weapon at 2 a.m. poses a hazardous, if not deadly, confrontation for an officer. And a policeman must be given some latitude —withheld here by the Court of Appeals—in deciding how to handle this type of situation.

The distinguished court below too lightly substituted its own judgment for that of a high-ranking police officer, who exposed his life and limb in the conscientious investigation of a report of danger, and who is certainly more experienced in the field than a member of the judiciary. A police officer's actions should not "be judged from [the] remote vantage point of a library." *Gaskins* v. *United*

States, supra at 811. While on duty in a high-crime area late at night, Sergeant Connolly unexpectedly came upon a known citizen, who reported that a man in a parked car across the street was carrying illegal drugs and was armed with a loaded revolver. Though arguably not "reliable" under the standards required to establish probable cause for arrest, the "informant" was nevertheless considered trustworthy and reliable by the officer, whom the informant had previously supplied information about other crimes. Also, in appraising the substance of the tip, Connolly knew that the informant was willing to place his credibility on the line and risk an immediate confrontation with a suspect right on the scene. Sergeant Connolly, after weighing all of the foregoing circumstances, and after offering to jeopardize his own safety and possibly his life, is now told that his actions were "unreasonable," that contraband he found must be suppressed, and that a guilty man must go free. And, of course, what steps should have been taken by the officer are not specified. The ruling of the Court of Appeals leaves no discretion to a policeman, who, confronted with a report about a potentially dangerous crime, must make an instant determination as to the proper course of action to pursue. Such a result was never intended by the commands of the Fourth Amendment.

Conclusion

The judgment below granting the writ should be reversed and the writ should be denied.

Respectfully submitted,

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February, 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

vs.

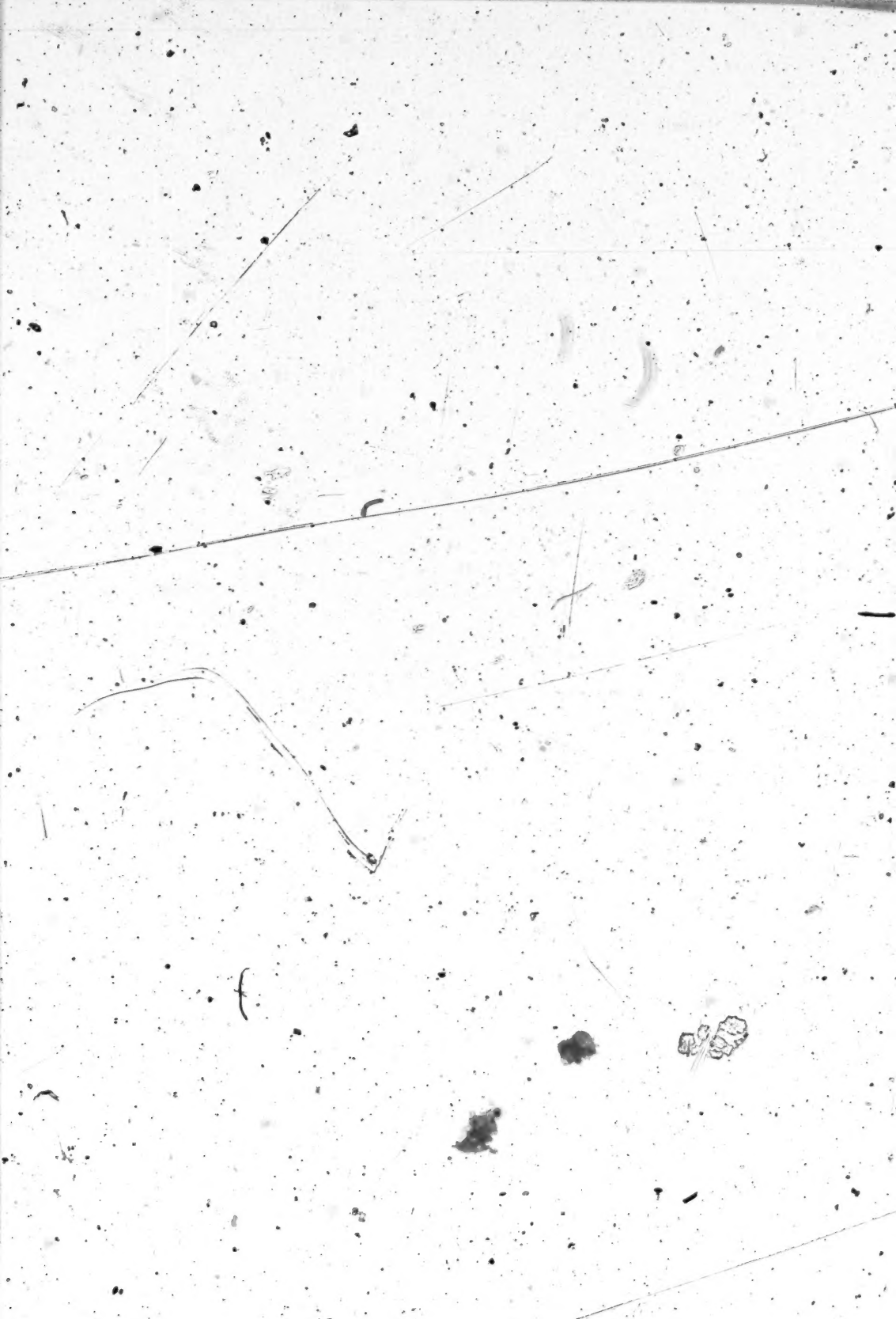
ROBERT WILLIAMS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

Opinions Below

The opinion of the Connecticut Supreme Court sustaining the original conviction of the respondent, Robert Williams, is reported at 157 Conn. 114, 249 A.2d 245. The opinion of the United States District Court for the District of Connecticut is not reported but is included within the Appendix (A-49). The initial opinion of the Court of Appeals for the Second Circuit affirming the District Court is reported at 436 F.2d 30. The subsequent opinion of the Court of Appeals for the Second Circuit after rehearing *in banc* and reversing the District Court is reported at 441 F.2d 394.

Jurisdiction

The judgment of the Court of Appeals after rehearing was entered on April 14, 1971 (A-85). The petition for a writ of certiorari was filed on June 15, 1971, and was granted on January 10, 1972 (404 U.S. 1014). The jurisdiction of this Court rests upon 28 U.S.C. § 1254 (1).

Constitutional Provisions and State Statutes Involved

The Respondent has sought and attained relief by the Fourth Amendment prohibition against unreasonable searches and seizures, made applicable to the States by the Fourteenth Amendment.

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the person or things to be seized."

Section one of the Fourteenth Amendment to the Constitution of the United States provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 19-246 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Acts prohibited. No person shall manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drugs, except as authorized in this chapter."

Section 29-35 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Carrying of pistol or revolver without permit restricted. No person shall carry any pistol or revolver upon his person, except when such person is within his dwelling house or place of business, without a permit to carry the same issued as provided in section 29-28. The provisions of this section shall not apply to the carrying of any pistol or revolver by any marshal, sheriff or peace officer, or to any member of the armed forces of the United States, as defined by Section 27-103, or of this state, as defined by section 27-2, when on duty or going to or from duty, or to any member of any military organization when on parade or when going to or from any place of assembly, or to the transportation of pistols or revolvers as merchandise, or to any person carrying any pistol or revolver while contained in the package in which it was originally wrapped at the time of sale and while carrying the same from the place of sale to the purchaser's residence or place of business, or to any person removing his household goods or effects from one place to another, or to any person while carrying any such pistol or revolver from his place of residence or business to a place or person where or by whom such pistol or revolver is to be repaired or while returning to his place of residence or business after the same has been repaired."

Section 29-38 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Weapons in vehicles. Any person who knowingly has, in any vehicle owned, operated or occupied by him, any weapon for which a proper permit has not been issued as provided in section 29-28 or section 53-206, or has not registered such weapon as required by section 53-202, as the case may be shall be fined not more than one thousand dollars or imprisoned not more than five years or both, and the presence of any such weapon in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word 'weapon,' as used in this section, means any pistol or revolver, any dirk knife or switch knife or any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, and any other dangerous or deadly weapon or instrument, including any slug shot, black jack, sand bag, metal or brass knuckles or stiletto or any knife, the edged portion of the blade of which is four inches or over in length."

Section 6-49 of the Connecticut General Statutes in effect during 1966 provided as follows:

> "Arrest without warrant. Pursuit outside precincts. Sheriffs, deputy sheriffs, county detectives, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the speedy information of others, and members of the state police department or of an organized local police department or county detectives shall arrest, without previous com-

plaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Members of an organized local police department, when in immediate pursuit of one who may be arrested under the provisions of this section, are authorized to pursue such offender outside of their respective precincts into any part of the state in order to effect the arrest. Such person may then be returned in the custody of such officer to the precinct in which the offense was committed. Any person so arrested shall be presented with reasonable promptness before proper authority.''.

Question Presented

The respondent's writ of habeas corpus in the United States District Court contested the failure of the Connecticut state courts to exclude from state criminal proceedings against the respondent certain items of evidence seized from his person and automobile.

The factual situation presents the following question for determination:

> May a single police officer acting upon specific information received at 2:00 a.m. from a known person to the effect that a particular automobile contains a person with a gun in his waistband and with narcotics approach that automobile to investigate that information and finding such a person in the vehicle and concerned for his safety and protection may he thereupon remove the weapon from the occupant's waistband without first seeing it and without making any other search of the person?

Statement

During the early morning hours of October 30, 1966, a Bridgeport, Connecticut Police Sergeant named John Con-

nolly was on duty alone in a neighborhood within the City of Bridgeport with a particularly high incidence of crime of various kinds. At approximately 2:15 A.M. on that date Sergeant Connolly met and conversed with a person whom he knew by name and who he considered to be a reliable and trustworthy person. The same person had on one previous occasion supplied Sergeant Connolly with certain information relative to criminal activity which the Sergeant considered credible but which had not led to an arrest because the parties involved had apparently ceased their activity before the officer's arrival.

Sergeant Connolly spoke with the person in the area of a gasoline station situated at the corner of East Main Street and Hamilton Street, two local streets in Bridgeport. At that time the individual pointed out a specific automobile parked on Hamilton Street and advised Sergeant Connolly that there was an occupant in the vehicle who had both a pistol in his waistband and also narcotics. After receiving this information the Sergeant determined to investigate and walked out of the gas station and across Hamilton Street in the direction of the specific auto.

Upon arriving at the same automobile Sergeant Connolly observed a single occupant seated inside. The Sergeant asked the occupant to open the door and the occupant proceeded to roll down the passenger window instead. At that time Sergeant Connolly was still alone and was concerned about his personal safety and protection.

When the car window was lowered Sergeant Connolly immediately placed one hand in through the window, partially inside the occupant's coat which was open and directly onto the handle of a pistol which he immediately removed. The pistol was subsequently determined to be a fully loaded .32 Caliber revolver. Before seizing the pistol, the Sergeant had not advised the occupant that he was under arrest and had made no other search of any type and in fact had touched no other area of the occu-

pant's body or clothing. In seizing the pistol, Sergeant Connolly acted because he wanted to remove the weapon before the occupant of the vehicle had an opportunity to use it on himself (the officer).

The occupant of the automobile was the respondent, Robert Williams. Sergeant Connolly proceeded to place Williams under arrest for possession of the revolver and conducted a further search of his person which disclosed six cellophane packets of a white substance (heroin) in an Alka-Seltzer jar in Williams' coat pocket and an additional 21 cellophane packets of heroin in his wallet. A further search of the auto at the scene disclosed a machete hidden under the front seat.

The respondent was charged with the crimes of violation of the Uniform State Narcotic Drug Act, Section 19-246, Connecticut General Statutes, involving the control of heroin; Carrying a Pistol Without a Permit in violation of Section 29-35, Connecticut General Statutes; and having Weapons in a Motor Vehicle in violation of Section 29-38, Connecticut General Statutes.

The respondent filed timely Motions to Suppress alleging an unconstitutional search and seizure and following the denial of his motions the respondent was convicted of the three charges following a Court trial in the Superior Court on April 11, 1967. The respondent's convictions were affirmed by the Connecticut Supreme Court at 157 Conn. 114, 249 A. 2d 245 and certiorari was denied by the United States Supreme Court at 395 U.S. 927, 89 S. Ct. 1783, 23 L. Ed. 2d 244.

On August 14, 1969 the respondent filed the instant petition for a writ of habeas corpus and after a hearing held on November 14, 1969 the District Court denied the petition on January 6, 1970.

Thereafter the respondent's appeal to the Second Circuit Court of Appeals was heard on September 29, 1970

and the decision of the District Court was affirmed on December 16, 1970 by a divided Court. The respondent's request for a re-hearing was granted by the Court, which subsequently reversed the District Court by an *in banc* decision on April 14, 1971.

Summary of Argument

The petitioner maintains that the activities of Sergeant John Connolly on the date in question were reasonable and tempered and represented legitimate and necessary self-protective efforts while investigating possible criminal activity. It is respectfully submitted that the specific information presented to the officer by a known person was certainly adequate to initiate investigation on his part. When the Sergeant's investigation brought him into close contact with the respondent the officer acted to neutralize a weapon which could have been unexpectedly and fatally used against him. The intrusion caused by seizing the respondent's pistol was restricted to the absolute minimum necessary to substantiate the weapon's existence and to remove it.

The subsequent search of the petitioner and his auto at the same location were contemporaneous and incident to his arrest and the items located and seized were legally taken. *Draper* v. *United States*, 358 U.S. 307, 311, 314, 79 S. Ct. 329, 3 L. Ed. 2d 327, 330, 332; *Preston* v. *United States*, 376 U.S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777.

Argument

The questions of law presented within the instant appeal are limited, clear and unique. The petitioner submits that existing legal precedent and a common sense consideration of the factual situation both justify the actions of Sergeant John Connolly on the date in question.

The determination of the propriety of the officer's location and removal of the respondent's weapon involves a dual inquiry—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 20, 88 S. Ct. 1868, 20 L. Ed. 2d 889.

I. The Propriety of the Officer's Investigation

The Petitioner submits that the first of these two questions necessarily resolves to a consideration of the officer leaving the gas station for the purpose of investigating the information which he had received. It appears clear and undisputed that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest." *Terry* v. *Ohio*, ante at 22.

The determination of whether the conversation at the gas station was sufficient to constitute an "appropriate circumstance" necessarily requires a consideration of both the reporting witness and the information which he submitted to Officer Connolly.

The reporting witness was known to the officer by name, a consideration which distinguishes the instant situation from the area of an anonymous tip. Logically, a distinction should necessarily exist between information gained from an anonymous source and that received from an individual or informant whose identity is known to the police. Cf. *Draper* v. *United States*, 248 F. 2d 295, 298.

The deliberate contribution of false information by an individual would ordinarily lead to the probable wrath of the officer and additionally in Connecticut could also lead

to the party's own arrest.[1] Further, in the instant situation there is absolutely no indication of any reason or motive why the reporting witness would be untruthful.

It is additionally relevant that Officer Connolly was not only personally acquainted with the reporting witness but also considered the person to be credible and trustworthy. The same person had in fact previously contributed information to the officer concerning criminal activity which Connolly believed and investigated and which did not lead to an arrest in the opinion of the officer only because the parties involved had ceased their activities before his arrival.

The information received was itself specific. The witness did not merely report that the party was seated in an automobile on Hamilton Street but pointed out one specific vehicle. Further, the information was relatively specific as to what the person had in his possession, being narcotics and a pistol. As to the weapon the information was additionally specific in describing its exact location at the party's waistband.

The petitioner submits that a police officer may precipitate an investigation upon such specific information regardless of the reliability of the source as an established informant and without regard to whether there exists probable cause to arrest. *Terry* v. *Ohio, ante* at 22.

> "Government agents are commissioned to represent the interests of the public in the enforcement of the

[1] Section 53-168 of the Connecticut General Statutes provides as follows: "False complaint to police. Use of police radio information. Any person who knowingly makes to any police officer, deputy sheriff, sheriff or prosecuting attorney a false report or a false complaint alleging that a crime or crimes have been committed, or who makes use of any information that has been broadcast on local or state police radio frequencies for the purpose of furthering crime or aiding and abetting the flight of criminals or who knowingly interferes with the detention of criminals or the apprehension of criminals, shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

> law and this requires affirmative action not only when there is reasonable ground for an arrest or probable cause for a search but when there is reasonable ground for an investigation. This is increasingly true when the facts point directly to a crime in the course of commission in the presence of the agent. Prompt investigation may then not only discover but, what is still more important, may interrupt the crime and prevent some or all of its damaging consequences." *Brinegar* v. *United States*, 338 U.S. 160, 179, 69 S. Ct. 1302, 93 L. Ed. 1879, 1892 (concurring opinion of Justice Burton).

A police officer should be legally allowed to investigate information of existing criminal activity received from a citizen even though the reporting party does not want his identity revealed, when the information is specific and the officer believes it to be true, regardless of whether that party has previously contributed information which led to an arrest and conviction. To make such a prior arrest or conviction a necessary prerequisite to the investigation of information received by an officer would unduly burden and defeat legitimate police operations.

In the instant situation the subsequent location of a person in the particular designated automobile at 2:30 A.M. certainly contributed some degree of corroboration of the information received. The degree of corroboration concededly may be open to debate, but it appears unquestionable that the existence of a person in the designated auto at 2:30 A.M. must be considered substantially more corroborative than the same coincidence occurring at 2:30 in the afternoon.

It is respectfully submitted that it would have been poor police work to totally ignore the information received and that Sergeant Connolly was discharging a legitimate investigative function when he walked out of the gas station

and across the public street to the area of the respondent's automobile.

II. The Officer's Self-Protective Search

In the *Terry* decision the Chief Justice described "the crux" of the case to be "whether there was justification for McFadden's intrusion of Terry's personal security by searching him for weapons in the course of that investigation." *Terry* v. *Ohio, ante,* at 23.

The petitioner now requests this Court to apply the exact same criterion to Officer Connolly and to determine whether there was justification for Connolly's intrusion of Williams' personal security by extending his hand (only) into his open coat in the course of his investigation.

The language of the Chief Justice immediately following his designation of the crux of that case appears uniquely applicable to the instant situation:

> "We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.
>
> In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. *When an officer is justified in believing that the*

individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.'' *Terry* v. *Ohio, ante,* at 24 (emphasis added).

Officer Connolly stood alone at 2:30 A.M. next to an auto containing a person who the officer believed had both narcotics and a pistol in his waistband. At that precise instant and location he was committed to make that split second decision which could involve consequences of supreme significance to himself.[2]

The Court of Appeals for the Second Circuit in its Per Curiam opinion apparently felt that the officer's removal of the pistol constituted an unjustified intrusion, holding that there was ''no other sufficient cause for reaching into Williams' waistband.'' *Williams* v. *Adams, Warden,* 441 F. 2d 394.

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[2] Sergeant Connolly testified on several occasions that he was particularly concerned for his safety at the time in question. At the Motion to Suppress the officer testified as follows:

"Q. Were you in concern for your own protection at that time? A. Yes, sir." (A-91)

During the respondent's trial Officer Connolly testified as follows:

"Q. And at the time, why did you reach in and remove this gun? A. Well, I wanted to remove the gun before he used it." (A-106)

Again at a later time during the trial the officer used the following language:

"Q. Why did you remove the pistol before you placed him under arrest? A. I didn't want him to use the pistol on me, sir." (A-114)

The respondent's Motion to Suppress was heard on April 4, 1967, and the trial itself was held on April 11, 1967, both having been heard substantially before the decision of this Court in the *Terry* case which was announced on June 10, 1968.

The petitioner submits and urges upon this Court that while a search cannot be justified by the items located it can never be disputed that Officer Connolly might well have been the late Sergeant John Connolly if he didn't act at the time and in the manner that he did.[3]

Parenthetically it should be noted that in both the *Terry* decision and the companion case of *Peters* v. *New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 reported on the same date, the individual police officer involved had absolutely no direct information concerning a weapon in the possession of either Terry or Peters, while in the instant situation Officer Connolly possessed specific information that Williams had a particular type of weapon and where it was located.

Similarly the factual situation in the present case can and should be clearly distinguished from the case of *Sibron* v. *New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917. In Sibron the Chief Justice emphasized that Patrolman Martin possessed no information concerning Sibron; was aware of no fact from which he could infer that Sibron was armed; did not search Sibron for the purpose of disarming him; and was in fact looking only for narcotics. *Sibron* v. *New York*, *ante* at 62, 64 and 65.

Conversely, it is again respectfully submitted that Officer Connolly was totally justified in his recognition that a

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[3] One Hundred and twenty-five local, county and state policemen were reported by the Federal Bureau of Investigation to have been murdered during the year 1971 with all but five of them having been killed by gunshot wounds. The Bureau reports that 24 policemen died answering robbery calls, 22 trying to arrest persons for crimes other than robbery or burglary, 20 shot from ambush and 20 during traffic law stops. Nine policemen were killed investigating suspicious persons or situations and seven each killed by prisoners, by mentally deranged persons and killed responding to burglary calls. The 1971 figures represents an increase of 25% over the total of 100 policemen who were murdered during 1970. Federal Bureau of Investigation Law Enforcement Bulletin, February, 1972, Page 33.

"reasonable apprehension of danger" to himself existed on Hamilton Street and in taking the absolute minimum defensive measure. Cf. *Terry* v. *Ohio, ante,* at 26.

III. The Scope of the Officer's Intrusion

If Sergeant Connolly was legally justified in acting to neutralize a legitimate threat of harm the question again remains whether his action was "reasonably related in scope to the circumstances which justified the interference in the first place." Cf. *Terry* v. *Ohio, ante,* at 20.

The intrusion in the instant situation differs in nature from the frisk applied by Officer McFadden to John Terry which consisted of the patting of a substantial portion of the outer clothing but which did not extend beneath the outer surface of the clothes until after the officer felt the weapon. Sergeant Connolly attempted no frisk or pat-down of any portion of Williams' body or clothing but did place one hand partially inside the man's open coat and onto the handle of the revolver which was located in the waistband of his trousers.

Clearly the weapons search must be strictly circumscribed by the exigencies which justify the initiation. *Terry* v. *Ohio, ante,* at 26. The intrusion caused by the seizure of the pistol from Williams was limited strictly to what was minimally necessary to determine whether the respondent had the weapon and to disarm him once it was discovered.

It is submitted that Officer Connolly acted appropriately in exactly the same fashion that any trained police officer or any man of reasonable caution would have in those circumstances, namely to focus attention exclusively on the location where he believed the weapon to be. Quite clearly Sergeant Connolly was not conducting an exploratory search for whatever evidence of criminal activity he might find. Cf. *Terry* v. *Ohio, ante,* at 30.

It is certainly recognized that for all practical purposes indignities or intrusions upon a person are not capable of being compared, measured or accurately defined. It is however, further submitted that the intrusion in the instant situation was probably the absolute minimum conceivable. It would appear that the officer never touched any part of the respondent's body and only an absolute minute portion of his clothing. There were no other persons in attendance. It is submitted that the scope of the indignity was minimal.

The action of Officer Connolly was clearly not "the product of a volatile or inventive imagination, or undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so." Cf. *Terry* v. *Ohio, ante,* at 28.

IV. Misapplication of the Informant Requirements

The right of a police officer to protect himself on the street should not be related to or dependent upon the law concerning informants. It appears patently illogical to hinge an officer's ability to legally protect himself on a judicial inquiry of whether the individual or informant advising him of the existence of an armed person has previously supplied sufficient information to qualify as a reliable informant. It appears just as illogical to insist that the street patrolman take the time to test the reporting party's sources and reliability before acting. Accordingly the petitioner submits that the rationale of the decision of *Spinelli* v. *United States,* 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637, should not be extended to the area of the protective search.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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for Fairfield County
Attorney for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 70-283

FREDERICK E. ADAMS, WARDEN,
CONNECTICUT STATE PRISON,
Petitioner,

vs.

ROBERT WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., AND THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AS AMICUS CURIAE IN SUPPORT OF PETITIONER.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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This brief, *amicus curiae*, is filed pursuant to Rule 42 of the rules of this Court. Consent to file it has been granted by the State's Attorney of Fairfield County, Connecticut, Counsel for Petitioner and by Mr. Edward F. Hennessey III Esq., Counsel for Respondent. Copies of these consents have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

Americans for Effective Law Enforcement, Inc. (AELE), is a national, not-for-profit, non-partisan, non-political organization incorporated under the laws of the State of Illinois. AELE has received a tax exempt ruling from the Internal Revenue Service as an educational corporation. As stated in its by-laws, the purposes of AELE are:

1. To explore and consider the needs and requirements for the effective enforcement of the criminal law.
2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law abiding citizens.
3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal laws.

AELE believes that one of the most effective means of accomplishing these purposes is through the filing of briefs, *amicus curiae,* in cases of crucial significance with regard to the enforcement of the criminal law. In its *amicus* advocacy AELE seeks to represent the concern of the average citizen with the problems of crime and lawlessness in this country and to represent the desire of the vast majority of our citizens for effective law enforcement, commensurate with the protection of the rights of individuals. We further seek to articulate to the courts the very real practical problems which confront law enforcement officers in order that the courts may weigh such problems in deciding cases which will have a vital impact on the effectiveness of the law enforcement process as a whole.

As the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice has pointed out:

> . . . many . . . decisions are made without the needs of law enforcement, and the police policies that are designed to meet those needs, being effectively presented to the court. If judges are to balance accurately law enforcement needs and human rights, the former must be articulated. They seldom are. Few legislatures and police administrators have defined in detail how and under what conditions certain police practices are to be used. As a result, the courts often must rely on intuition and common sense in judging what kinds of police action are reasonable or necessary, even though their decisions about the actions of one police officer can restrict police activity in the entire Nation. (Page 94)[1]

The articulation called for by the President's Commission is what AELE seeks to accomplish.

The International Association of Chiefs of Police, Inc., represents over 5,000 chiefs and top executives of police departments and other law enforcement agencies in all 50 states and in 85 foreign countries. The IACP serves the law enforcement profession and the public interest by advancing the art of police service. Its aims are to foster police cooperation and the exchange of information and experience among police administrators throughout the world, and to encourage adherence of all police officers to high professional standards of performance and conduct.

This case is one of extreme importance both to the police profession as a whole and to the average citizen concerned with crime. It is the first case dealing directly with the police procedure known as "field interrogation", or "stop and frisk", to come before this Court since its landmark

1. President's Commission on Law Enforcement and Administration of Justice (1967) p. 94.

decision in *Terry* v. *Ohio*, 392 U. S. 1 (1968). The issue of stop and frisk is vital to the police profession, both from the standpoint of the officer on patrol who needs to know what actions he may properly take to investigate persons whom he reasonably suspects of criminal activity and, perhaps more importantly, from the point of view of the safety of the police officer who, as a part of his duties, must confront such suspects in public places.

For those whose concern is with the effectiveness of the enforcement of the criminal law, stop and frisk also has a vital significance. O. W. Wilson has described the basic police function succinctly: "The core of the police purpose is to prevent unlawful acts".[2] This preventive function is, we believe, basic to the protection of the community and the stop and frisk concept, entailing as it does the right of a police officer to deal with suspicious persons and circumstances upon less than probable cause, is basic to the preventive function.

Additionally AELE appeared as *amicus curiae* in support of the State of Ohio in *Terry* v. *Ohio* in which this Court first granted to the police a carefully delineated right to stop and frisk persons reasonably suspected of criminal activity. As a result, we believe that we have a particular interest in the development of the law in this crucial area.

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2. O. W. Wilson, Police Administration (2nd Ed. 1950) McGraw-Hill, New York. Page 227. O. W. Wilson is the Dean Emeritus of the School of Criminology, University of California, Berkeley, and former Superintendent of the Chicago Police Department.

ARGUMENT

I.

THE SCOPE AND NATURE OF THIS BRIEF

Americans for Effective Law Enforcement, Inc., and the International Association of Chiefs of Police, Inc., *amicus curiae* in this case, will not reiterate the arguments made by Petitioner herein, although we unreservedly agree with and support Petitioner's contention that in this case the stop and frisk together with the consequent arrest and search of Respondent should be upheld as reasonable under the Fourth Amendment. We will, rather, focus upon three aspects of the stop and frisk issue now before the Court which we believe to be relevant not only to the issues in the instant case but, additionally, to the entire function of law enforcement in the areas of preventive police patrolling and crime prevention.

The core of our argument can be summarized by a quotation from the President's Commission on Law Enforcement and Administration of Justice describing the relationship of the police of this country to the rest of the criminal justice system:

> What is distinctive about the responsibility of the police is that they are charged with performing law enforcement functions where all eyes are upon them *and where the going is roughest, on the street.*[3] (emphasis added).

The "street", then, is the frame of reference for our argument herein. We will present information dealing with

3. President's Commission on Law Enforcement and Administration of Justice (1967): Task Force Report: "The Police" P. 1.

the practical aspects of police work involving day-to-day confrontations between law enforcement officers and criminal suspects which this Court's decision will surely affect. Our argument will be brief; it deals with three facets of practical police work in the stop and frisk context:

1. The *duty* of police officers who are involved in officer-suspect confrontations to take affirmative action for the protection of the public.
2. The *danger* to police officers involved in stop and frisk situations and the potential increase in this danger which would result if the decision below were upheld.
3. The fact of *non-abuse* by the police of the stop and frisk power since this Court's decision in *Terry* v. *Ohio*.

The ramifications for law enforcement inherent in the Court's decision in this case are obvious. We urge the Court to do as it did in *Terry* and consider the practicalities and problems of police work "on the street."

II.

A POLICE OFFICER HAS A DUTY TO INVESTIGATE SUSPICIOUS PERSONS AND CIRCUMSTANCES

Mr. Justice White, concurring in *Terry* v. *Ohio* stated, with regard to police-citizen confrontations on the street, that: "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." 392 U. S. at 34. We agree wholeheartedly with this premise, but we submit that the police function goes one step further and that a policeman on patrol has an *affirmative duty* to investigate suspicious persons and circumstances.

This duty was implicitly recognized by Mr. Chief Justice Warren writing for a majority of this Court in *Terry* v.

Ohio. The Chief Justice first described the suspicious activities of Terry, Chilton and Katz, the suspects in that case, who were engaging in conduct which, to Detective McFadden's experienced eye, suggested that they were "casing" a certain store for a robbery. He then continued:

> It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores to have failed to investigate this behavior further. 392 U. S. at 23.

Likewise Judge Hays dissenting from the holding below in the instant case stated with regard to the police officer's conduct:

> If the police officer had disregarded the information that a man sitting alone in a car in a high crime area at 2:15 in the morning had a gun stuck in his belt, his conduct, far from being reasonable and prudent would have been bizarre and erratic. *Williams* v. *Adams*, 441 F. 2d 395 (2nd Cir. 1971). *Accord*, *Ballou* v. *Massachusetts*, 403 F. 2d 982, 985 (1st Cir. 1968)

We submit, therefore, that, in situations such as those which arose in *Terry*, and in the instant case, when an officer reasonably suspects that one or more persons are armed in public; it is not optional with him to withdraw from the scene without taking some action. He has, rather, a duty to act to prevent an unlawful act and to protect the public. As Mr. Justice Harlan stated in *Terry* v. *Ohio*:

> . . . concealed weapons create an immediate and severe danger to the public and though that danger might not warrant routine general weapons checks, it could well warrant action on less than a 'probability.' 392 U. S. at 31-32.

In the instant case Sergeant Connolly was clearly not engaging in a "routine weapons check;" he had, rather, specific information that an individual sitting in a certain

automobile had in his possession a gun. In our view Sergeant Connolly, by approaching Williams to investigate the matter, took the only course of action open to a professional policeman; he was, in fact, acting to prevent precisely that "immediate and severe danger to the public" described by Mr. Justice Harlan.

Additionally, the actions of Sergeant Connolly, and of other police officers in similar situations, should be viewed in the context of the crime situation in this country today. According to the Uniform Crime Reports of the Federal Bureau of Investigation, crimes of violence—murder, robbery, forcible rape and aggravated assault—increased by 142 per cent during the decade 1960-1970. This marked rise of violent crimes is significant in a case dealing with stop and frisk for several reasons. First, crimes of violence are precisely those types of crimes which occur with frequency in the "on the street" milieu in which cases such as *Terry* v. *Ohio* and the instant case arise. Next, violent crimes are those in which a weapon is most frequently used. Finally, it is an uncontested fact that the minorities in this country, particularly the ghetto and inner city dwellers, are the primary victims of violent crimes, far out of proportion to their numbers.[4] The very prevalance of such crimes mandates the necessity for preventive police action such as that taken by Sergeant Connolly in the instant case.

Police patrols "on the street" constitute society's main defense against crimes of violence. If it were not the duty

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4. *See*, e.g., Crime Control Digest, March 25, 1970, page 7, in which is described a study by Stanford Criminologist Herbert L. Packer which concluded that ghetto residents are 100 times as likely to become victims of violent crime as their more affluent suburban counterparts. See also: "Black Crime Preys on Black Victims" an Associated Press study appearing in the *Denver Post*, August 23, 1970, page 35; and "Black Law and Order" in The National Observer, May 10, 1971, page 1.

of the police to take action to prevent such crimes, through preventive patrol action, this defense would be considerably weakened. As the President's Commission has noted:

> The heart of the police effort against crime is patrol—moving on foot or by vehicle around an assigned area, stopping to check buildings, to survey possible incidents, to question suspicious persons, or simply converse with residents who may provide intelligence as to occurrences in the neighborhood.[5]

We urge this Court not to restrain a police officer's investigative spirit which is premised upon his duty to act. While we recognize that this spirit cannot go unchecked and that police action premised upon motives of harassment or an inventive imagination cannot be condoned, we submit that in the instant case Sergeant Connolly's conduct was reasonable and proper; in fact, the oath which he took to protect the public would brook no less.

Against the background of a policeman's duty to take action to prevent crime and to protect the public and in view of the spiralling rates of violent crimes—particularly against the poor and the minorities—we urge the Court to view the instant case realistically and to sustain, as proper police procedure, Sergeant Connolly's actions.

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5. President's Commission on Law Enforcement and Administration of Justice, 1967. Task Force Report: The Police, page 1.

III.

THE DECISION BELOW IF UPHELD COULD MATERIALLY INCREASE THE DANGER TO POLICE OFFICERS DURING POLICE-SUSPECT CONFRONTATIONS

This Court has traditionally guarded the safety of law enforcement officers and has recognized the danger inherent in police work.[6] This was, basically, the rationale for the "frisk" in *Terry* v. *Ohio*. We submit that if the ruling below is upheld, it could quite conceivably place police officers, who are attempting to conduct themselves within the letter and spirit of this Court's pronouncements, in situations of extreme danger.

We have, in the previous section, postulated the duty of a policeman to act to investigate in cases such as this one. Consider the facts in the instant case. Sergeant Connolly received a tip from an informant whom he considered reliable that "a person seated in the vehicle was armed with a pistol at his waist. . ." *Williams* v. *Adams*, 441 F. 2d at 395. Sergeant Connolly clearly viewed it as his duty to investigate further and approached the suspect. Had he not made a protective "frisk" by removing the pistol from the suspect's waist, Connolly might today be dead.

The situation involving policemen being killed in line of duty was sufficiently grave in 1968 for this Court to take notice of the fact in *Terry* v. *Ohio*. Mr. Chief Justice Warren pointed out at page 24 that in 1966 fifty seven law enforcement officers were killed in the line of duty. *Today this figure has more than doubled*; in 1971 125

6. *See, e.g., Preston* v. *United States*, 376 U. S. 364, 367 (1964). "The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer and prevent an escape . . ."

officers performing their duties were killed by criminal action.[7]

In *Terry* Mr. Chief Justice Warren stated of police killings:

> In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. 392 U. S. at 24.

We submit that these words, and the import which they bear upon the safety of police officers, are even more compelling today.

The figures cited above from the FBI reports—125 police officers murdered in 1971—deal with *all* cases in which law enforcement officers were killed in the line of duty in a single year. This case involves the problems encountered in field interrogation or stop and frisk situations, i.e., those situations in which police officers make a face-to-face confrontation with one or more suspects. With this in mind we have turned to another source of information regarding police fatalities in order to present specific data concerning *only* those situations in which an officer-suspect or stop and frisk situation involved.

This source is the Annual Law Enforcement Casualty Summary published by the Police Weapons Center of the International Association of Chiefs of Police for the period

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7. Uniform Crime Reports, Federal Bureau of Investigation, 1971.

July, 1970 to June, 1971.[8] The Police Weapons Center collects and disseminates data relating to police officers killed or injured in the line of duty and publishes a yearly report. These reports, which are based upon a "fiscal" year which extends from July 1 to June 30 of the next year, give a more detailed account than do the F. B. I. reports of how each officer met his death; consequently we are able to separate police deaths in the stop and frisk type situation from other killings of policemen.

Of 99 law enforcement officers killed in the period July 1, 1970 to June 30, 1971, twenty-two officers—one in five—were killed in twenty separate stop and frisk type situations.

The following chart lists the pertinent facts in each case and these cases point up the high degree of danger to which a police officer is exposed in confrontations with persons suspected of criminal activity.[9]

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8. Annual Law Enforcement Casualty Summary, July, 1970 to June 1971, by Barry L. Battista and Gary S. Persinger. Published by the Police Weapons Center of the International Association of Chiefs of Police, Eleven Firstfield Road, Gaithersburg, Maryland 20760.

9. We have included both on-the-street and automobile confrontations since *Terry* involved the former while the instant case involves the latter. Traffic stops, we contend, are within the stop and frisk doctrine because the danger of unexpected attack is as great in these instances as it is in the typical *Terry* type situation.

Date	Location	Circumstance
7–26–70	DeSoto County, Mississippi	Suspects were stopped for a traffic violation after they had just burglarized a business.
8–11–70	Piqua, Ohio	Officer became suspicious of suspect and attempted to question him.
9–23–70	New York, New York	Officer was questioning suspect about possession of pistol.
9–28–70	Cleveland, Ohio	Suspects were stopped for traffic violation.
9–30–70	Atlantic City, New Jersey	Officer attempted to question suspicious man on the boardwalk.
11– 2–70	Antlers, Oklahoma	Officer questioning suspect.
11– 9–70	New York, New York	Officer was questioning suspect about impersonating a police officer.
12– 8–70	Compton, California	Suspect was stopped for questioning; had four outstanding warrants.
12–25–70	Sumter, South Carolina	Suspects were stopped for traffic violation.
12–28–70	San Diego, California	Officer was checking identification of suspect.
1–24–71	Pahokee, Florida	Suspects were stopped by officer while driving stolen car.
1–31–71	Bridge City, Texas	Traffic stop.

Date	Location	Circumstance
2–15–71	Mount Airy, North Carolina	Officer stopped suspect driving a stolen car.
2– 5–71	Navajo, Arizona	Deranged individual—2 officers were killed in separate incidents as they attempted to question a suspect.
2–20–71	St. John, Indiana	2 officers investigating suspects sleeping in a car who were wanted for kidnapping.
3–25–71	Malone, Texas	Suspects were stopped for traffic violation and had just committed a felony.
4–29–71	Washington, D. C.	Officer was questioning suspect wanted on bench warrant.
5–14–71	Farmington, Utah	Officer stopped suspects driving stolen car.
6–14–71	Oklahoma City, Oklahoma	Officers were questioning suspicious persons in auto.
6–25–71	Richmond, Virginia	Suspect stopped for traffic violation.

These stark and tragic descriptions of police killings have one factor in common: death struck the officers, with little or no warning, in cases of officer-suspect confrontations. The ruling of the lower court in the instant case points up the staggering dilemma faced by police officers who have reason to suspect that someone whom they are investigating is armed. On the one hand is the natural desire of a police officer to protect himself from being killed in incidents such as have been described in the above list of officers killed in stop and frisk situations. On the other hand the ruling below appears to tell an officer that *even if he has specific*

information that a suspect is armed, he may not lawfully frisk him for weapons. We urge this court to resolve the question in favor of the safety of the officer as it did in *Terry.* Any other holding will, we believe, significantly jeopardize further those who are in an already too dangerous profession.

IV.

THE STOP AND FRISK DOCTRINE ANNOUNCED BY THE UNITED STATES SUPREME COURT IN TERRY v. OHIO HAS NOT BEEN ABUSED BY LAW ENFORCEMENT OFFICERS

In June of 1968 this Court, in *Terry* v. *Ohio,* ruled that a law enforcement officer could properly stop and frisk persons where suspicious behavior leads a prudent police officer reasonably to suspect that criminal activity is afoot. This is true even though the officer might not have sufficient information to establish probable cause to arrest a given suspect. To this nation's law enforcement officers, *Terry* v. *Ohio* was a land-mark decision. It is safe to assume that the stop and frisk technique authorized by *Terry* has been used by every law enforcement agency in this country. Our final objective as *amicus curiae* is to demonstrate that while stop and frisk is widely used, generally speaking it has not been abused.

In *Terry* v. *Ohio,* the opponents of the stop and frisk procedure argued that the doctrine of stop and frisk would be "judicial abdication to police judgment,"[10] and that the courts could not control the procedure since an officer "may always 'reasonably suspect' he is in danger."[11] However, a review of state and federal stop and frisk cases decided during the years 1969, 1970 and 1971 indicates that these dire forebodings did not materialize into facts.

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10. See, the brief for the NAACP Legal Defense and Education Fund Inc. as *amicus curiae* in *Terry* v. *Ohio* at 47.

11. *Id.* at 51-52.

The source of our review of these cases was *Nedrud: The Criminal Law*[12] (hereafter referred to as *Nedrud*), a collection of criminal law cases which is published as a service for attorneys and others interested in the criminal law which classifies and digests cases of importance in this area. This publication lists: "Detention, Stop and Frisk" as a separate category of cases taken from federal and state reporters. During the years 1969, 1970 and 1971, *Nedrud* digested 272 cases in the stop and frisk category. Of the 272 cases digested, 222 opinions upheld the particular police procedure involved as proper. In only 50 cases did the courts find that stop and frisk procedures were violative of the Fourth Amendment's guarantee against unreasonable searches and seizures.

These figures, we submit, indicate an extremely high level of proper, non-abusive law enforcement, particularly when it is considered that 1) the police were dealing in a relatively newly defined area of the law enforcement process and 2) most stop and frisk confrontations are made on the spur of the moment in which a police officer has very little time to engage in lengthy considerations about the propriety or impropriety of his acts.

Further, of the fifty cases which were decided against the police, in seventeen of them the courts actually upheld the stop and the initiation of the frisk but ruled the evidence obtained inadmissible because of the *scope* of the frisk. Thus, in the final analysis, of the two hundred and twenty two cases digested in *Nedrud* only thirty three were held to be cases in which the *entire* officer-suspect confrontation was considered to be improper. This produces a ratio of almost 7-1 in favor of police procedures in the stop and frisk area which were sustained.

12. Nedrud, The Criminal Law, by Duane R. Nedrud and Marguerite D. Oberto. LE Publishers. 612 N. Michigan Avenue, Chicago, Illinois, 60611. Volumes for 1969, 1970, and 1971. A. Sec. 1.4 "Detention, Stop and Frisk."

We conclude from the foregoing figures that the stop and frisk power granted by this Court to the police in 1968 has not been abused. We believe this evidence to be relevant to the Court's determination in the instant case because this is the first case to come before this Court since *Terry* v. *Ohio*, which deals directly with the stop and frisk powers of the police. The particular relevance of such non-abuse lies in the fact that in this case we join counsel for the Petitioner in urging a reaffirmance of the doctrine of *Terry* v. *Ohio*. In effect, the Court, in *Terry*, reposed considerable trust in the professionalism and restraint of the police in on-the-street encounters. We believe that the police have vindicated this trust and that both in the instant case, and as a guide for future police conduct, *Terry* should be reaffirmed.

CONCLUSION

If the ruling below is affirmed, this Court will be taking a significant step backward from the doctrine enunciated in *Terry* v. *Ohio*. We submit that, based upon the clear evidence presented of non-abuse by the police of stop and frisk powers, such a step backwards is unwarranted. Rather, that backward step would effectively restrain the *proper* investigative spirit of the police—a spirit premised upon the duty of the police to take action to protect the public. Finally, if the ruling below were upheld, we believe that the danger faced by police officers in stop and frisk confrontations would be materially increased. For these reasons we urge that the ruling of the Court of Appeals for the Second Circuit in this case be reversed.

Respectfully submitted,

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Supreme Court, U. S.
FILED
MAY 20 1972
MICHAEL RODAK, JR., CLERK

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,
Petitioner,

v.

ROBERT WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

CONSTITUTIONAL PROVISIONS & STATUTES

In addition to the Fourth Amendment to the United States Constitution and Section 6-49, 19-246, 29-35 and 29-38 of the Connecticut General Statutes, which are set forth in the appellant's brief (pp. 2-5) the appellee submits the following constitutional and statutory provisions are involved in this appeal.

1. That portion of the Fifth Amendment of the United States Constitution which provides,

"No person shall be . . . compelled in any criminal case to be a witness against himself. . ." United States Code Annotated, Constitution, Amendments 1 to 5, page 297.

2. That portion of Section 1 of the Fourteenth Amendment of the United States Constitution which provides,

". . . nor shall any State deprive any person of life, liberty or property, without due process of law; . . ." United States Code Annotated, Constitution, Amendments 6 to 14, page 288.

3. Section 54-33f of the Connecticut General Statutes as in effect during 1966,

"A person aggrieved by search and seizure may move the court which has jurisdiction of his case, or if such jurisdiction has not yet been invoked, then the court which issued the warrant, for the return of the property and to suppress for use as evidence anything so obtained on the ground that: (1) The property was seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing." Connecticut General Statutes Annotated, Volume 28, Titles 53 to 55; Cumulative Annual Pocket Part for use in

1971-1972, page 179; Public Acts of the State of Connecticut January Session, June Special Session, 1963, Public Act No. 652, Section 7, pages 1002-1003.

4. Constitution of the State of Connecticut, 1965, Article I, Section 7,

> "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." Connecticut General Statutes Annotated, Constitution, Volume 1, page 343.

5. That portion of Article I, Section 8 of the Constitution of the State of Connecticut of 1965, which provides,

> ". . . No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, . . ." Connecticut General Statutes Annotated, Constitution, Volume 1, page 344.

6. Article I, Section 9 of the Constitution of the State of Connecticut of 1965,

> "No person shall be arrested, detained or punished, except in cases clearly warranted by law." Connecticut General Statutes Annotated, Constitution, Volume 1, page 344.

7. Article I, Section 15 of the Constitution of the State of Connecticut of 1965,

> "Every citizen has a right to bear arms in defense of himself and the State." Connecticut General Statutes Annotated, Constitution, Volume 1, page 345.

QUESTIONS PRESENTED FOR REVIEW

1. Does the Fourth Amendment's prohibition against all searches and seizures except those based upon a warrant and probable cause invalidate a search and seizure based solely upon hearsay information from an undisclosed informant, where there is no factual basis to conclude either that the informant was reliable or that the informant's information was reliable?

2. Does the doctrine enuciated in *Terry v. Ohio*, 392 U.S. 1 (1968) permit a seizure of a concealed weapon from a citizen by a police officer where there is no showing that the officer either observed conduct or possessed other information sufficient to form a reasonable belief that the citizen presented an immediate threat of danger to the officer or to the public?

a. Is any such right of search and seizure more restricted in States where the carrying of concealed weapons is authorized by its constitution and statutes?

3. Even if the police officer in this case was authorized to seize a gun from the appellee's waist, did this seizure justify his arrest and the general exploratory search of his person and motor vehicle which followed?

SUPPLEMENT TO APPELLANT'S STATEMENT OF THE CASE

The appellee essentially agrees with the statement of the case except that he would characterize the evidence somewhat differently. Thus appellee would note that the evidence revealed that Officer Connolly spoke to an informant, who told him, "There is a man over in that car with a gun on his person at his waistband, and this man also has drugs." (App. 92-3). At the time he received this information he could see the car in question parked nearby and a person sitting in it. (App. 93). Officer Connolly then radioed for assistance and other officers were summoned. (App. 101-2). Prior to their arrival he crossed

the street, walked in front of the car and stopped by the passenger door. (App. 93, 105). He tapped on the window and said "open the door". (App. 91). The occupant rolled down the window. (App. 91). Officer Connolly observed a man sitting on the passenger side of the front seat. (App. 91). The car motor was not running. (App. 101). This passenger was sitting quietly and made no gesture or comment. (App. 101). Officer Connolly reached in and withdrew a gun from the appellee's waistband. (App. 94). This gun was not visible prior to its removal. (App. 115). Officer Connolly did not draw his own gun prior to this action. (App. 94). Officer Connolly then had the appellee alight, arrested him and advised him of his rights. (App. 97, 107). A short time later two other officers arrived. (App. 107). Appellee's person was searched and a jar with heroin in it and some bags of heroin were removed from his clothing pockets. (App. 108-9, 111-2). The car was then searched and a machete was found under the front seat. (App. 109).

The informant had given the officer only one prior tip. (App. 95-6, 97). This was in the winter of 1965 and was information that homosexual activity was going on in the Bridgeport Railroad Station. (App. 96). This information could not be substantiated because no evidence of such a crime was found. (App. 96). No arrest resulted from it. (App. 96). Officer Connolly was aware when he got this tip that the informant had a criminal record for breach of peace and disorderly conduct. (App. 100-1).

During a lower court hearing Officer Connolly testified that he was in his radio car and went to the Williams' car in response to a police signal. No mention was made of any informant. (App. 78, n. 9 [the transcript of that proceeding being an exhibit in this case, App. 9-18]).

ARGUMENT

The appellee submits that this case raises three basic questions:

(1) Did Officer Connolly have a right to arrest Williams prior to the seizure?

(2) If Officer Connolly did not have the right to arrest Williams prior to the seizure did he nonetheless have the right to make the seizure?

(3) Did Officer Connolly have the right to arrest Williams after the seizure and thereafter to make a general exploratory search of his person and of his car?

The appellee submits that each of these questions must be answered in the negative.

A. NO PROBABLE CAUSE EXISTED TO ARREST WILLIAMS PRIOR TO THE SEIZURE.

The evidence clearly indicates that Officer Connolly's actions were precipitated by information received from an informant. This informant was not identified and both the State and Federal District Court upheld the State's contention that this informant's identity should not be disclosed. (App. 94-101, 78, fn. 9).

This informant had only given one prior tip to the police, which tip was totally unsubstantiated. Further the information given in this case lacked any basis by which the officer might determine that it was based upon personal observation or some other legally sufficient source. Finally up until the time of the seizure the only independent corroboration which the officer had was that the car which the informant was pointing to was there and that the occupant which the informant referred to was there.

Hearsay as the foundation for probable cause falls into several general areas. In some instances the hearsay standing alone can supply probable cause whereas in other instances it may require additional corroboration before probable cause will be reached.

Hearsay which in itself will satisfy probable cause must meet two conditions. These two conditions are (1) there must be a factual foundation justifying trust in the declarant and (2) there must be a factual demonstration that the declarant's information arises either from personal observation or from some other legally sufficient source.

Satisfaction of the first test is reached in various ways: Thus a statement of a citizen recounting contemporaneous criminal activity committed upon his person or property or in his presence is deemed to come from a reliable source. *Pendleton v. Nelson*, 404 F.2d 1074, 1075-6 (9 Cir. 1968); *Wimble v. United States*, 369 F.2d 950 (D.C. Cir. 1966); *United States v. Traceski*, 271 F. Supp. 883 (D. Conn. 1967); *State v. Mazzadra*, 28 Conn. Sup. 252, 258 A. 2d 310 (1969). The rationale for reliance upon this type of declarant rests in the likelihood that a citizen, whose identity is usually available, would ordinarily not contrive a complaint of this type. *State v. Mazzadra, supra.* The appearance of the declarant and circumstances of the complaint, however, are important to an initial finding that he falls within this class. *Ibid.*

A second instance where the declarant's reliability is recognized without resort to proof of prior reliability is in the case where the declarant by his statement inculpates himself in the criminal conduct which he is recounting. *Spinelli v. United States*, 393 U.S. 410, 425, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969). While this type of declarant would ordinarily lack the necessary indicia of trustworthiness, the fact that his declaration is self-incriminating renders it reliable upon the same rationale which takes such statements out of the usual evidential prohibition against hearsay. *Ibid.*

The third instance is the one with which we are confronted in this case. This is the police informant. This type of person, usually undisclosed, differs from either of the others in that he is not the citizen-victim seeking immediate assistance by virtue of a crime committed against

him, nor is he the citizen-complainant, whose appearance and conduct justify prompt response by police officers. *Daniels v. United States*, 393 F.2d 359 (D.C. Cir. 1968).

Where reliance is had upon the undisclosed informant independent proof of facts known to the officer when the tip was received and sufficient to justify his reliance on this informant must be proven. *Spinelli v. United States, supra*, at p. 417; *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964). That the requirements set forth in those cases apply with equal vigor to a search incidental to a warrantless arrest was recognized in *Whiteley v. Warden of Wyoming Penitentiary*, 401 U.S. 560, 91 S. Ct. 1031, 28 L.Ed.2d 306 (1971).

In this case the evidence in support of the informant's reliability was totally inadequate. This proof must be objective proof of facts sufficient to justify reliance and not merely proof of the officer's subjective trust. *Recznik v. City of Lorain*, 393 U.S. 166, 69 S. Ct. 342, 21 L.Ed.2d 317 (1968). Here the only evidence was that this informant gave the police one prior piece of information which could never be verified. This it is submitted falls far short of the necessary objective evidence. *Ibid.*

The second standard is even more objective and therefore more easily applied. It requires that independent proof exist prior to the issuance of the warrant or exercise of the warrantless arrest which will permit the executing authority to conclude that it has a reliable basis. *Spinelli v. United States, supra; Aguilar v. Texas, supra*, and *Whiteley v. Warden, supra*. In the first two instances cited such reliability is implicit. In other words in the first situation the citizen tells the officer either that he knows because he saw it or he knows because it happened to him. Similarly in the second type of hearsay its reliability is self-proven because the confessing party says that he knows because he did it. However, this is not true of the informant. Consequently, his statement must be sufficiently surrounded by fact to remove it from the area of con-

jecture or surmise and to negative the possibility that it merely is a reiteration of rumor or some other type of basically unreliable hearsay. *Ibid.* Upon the face of this record it is clear that no such proof existed.

Where the hearsay standing alone is insufficient to warrant an arrest then its defective character can only be cured by a showing of other facts which when viewed in conjunction with the hearsay tend to supply separate corroboration of possible criminal activity. This distinction is most important to any case-by-case analysis, since many decisions evidence that the hearsay fell short of these dual requirements but nonetheless an arrest or search was upheld. It is, however, submitted that these cases, if properly decided, will indicate that the arresting authority acted not only upon the hearsay but also upon other facts which, when viewed in conjunction with the hearsay, supplied probable cause to believe that criminal activity had been or was being committed. This is seen in many cases in this area: *United States v. Soyka*, 394 F.2d 443 *cert. den.* 393 U.S. 1095 (2 Cir. 1968) and *United States v. Mitchell*, 425 F.2d 1353 *cert. den.* 400 U.S. 853 (8 Cir. 1970), (the reliability of the informant established, but not the reliability of his information); *Thompson v. White*, 406 F.2d 1176 (5 Cir. 1969) (the reliability of the information established but not the reliability of the informant); *Bailey v. United States*, 386 F.2d 1 *cert. den.* 392 U.S. 946 (5 Cir. 1967) (neither test of reliability was established). In each of these cases, the facts disclosed that the possible criminal activity was independently corroborated.

Corroboration may cure a defect only when it corroborates the possible criminal activity under scrutiny. *Potter v. United States*, 362 F.2d 493 (5 Cir. 1966). In other words it is not enough that the officer observes merely innocent facts contained in the tip. *Potter v. United States, supra; United States v. Rundle*, 282 F. Supp. 926 (E.D. Pa. 1968). Thus when Officer Connolly saw the car and the occupant he was not obtaining corroboration

of the type which has been deemed sufficient to cure the hearsay defects. *Ibid.*

Based upon the foregoing it is submitted that the federally defined standards of probable cause were not met and thus the seizure cannot be justified as one made incidental to a warrantless arrest. These federal standards govern the activities of Connecticut police officers. *Beck v. Ohio*, 379 U.S. 89, 85 S. Ct. 223, 13 L. Ed. 2d 142 (1964). And the Connecticut courts have acknowledged that "reasonable grounds" to arrest as used in 6-49 of its statutes means "probable cause", *State v. Wilson*, 153 Conn. 39, 212 A.2d 75 (1965), and that arrests based upon undisclosed informants must conform to the standards laid down in *Aguilar v. Texas, supra. State v. Allen*, 155 Conn. 385, 232 A.2d 315 (1967).

B. No Right Short of Probable Cause Exists Which Would Justify This Seizure

It is somewhat ironic that this case turned upon an application of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), since Robert Williams was convicted on April 11, 1967 and the trial court's finding of fact which frames the issues for a Connecticut appeal was filed on September 11, 1967 (App. 36-48) whereas *Terry v. Ohio, supra*, was not decided by this Court until June 10, 1968.

It is obvious from reading the finding and by judging the case in the context of the law as it existed when the arrest occurred, when the trial was held and when the appeal was framed that the so-called "stop-and-frisk" doctrine was not even considered. Nonetheless the Connecticut Supreme Court although apparently finding reliability nonetheless announced that the holding of *Terry v. Ohio, supra*, was now a part of Connecticut's common law. *State v. Williams*, 157 Conn. 114, 118, 249 A.2d 245 *cert. den.* 395 U.S. 927 (1968). Compare *State v. Carroll*, 131 Conn. 224, 231, 38 A.2d 798, 801 (1944).

By taking this rather large legal step that court totally ignored much of Connecticut's constitutional and statutory law. For example 6-49 of the statutes limits a policeman's right of arrest to cases where probable cause exists. *State v. Wilson, supra.* This statute has been held to circumscribe the power of police officers in Connecticut; anything exceeding that power being illegal and void. *Sims v. Smith,* 115 Conn. 279, 161 Atl. 239 (1932); *State v. Traub,* 150 Conn. 169, 187 A.2d 230 (1962) vacated on other grounds 374 U.S. 493 on remand 151 Conn. 246, 196 A.2d 755 *cert. den.* 377 U.S. 960. And 54-33f of the statutes expressly limits the power of search and seizure requiring exclusion of any property seized without probable cause. *State v. Penna,* 5 Conn. Cir. Ct. 44, 241 A.2d 385 (1967). Finally Article I, Section 9 of the Connecticut Constitution prohibits either an arrest or a detention except where clearly warranted by law. This is a rather unique provision which should have been considered in passing upon any question of a police officer's right to detain for investigative purposes. Cf. *Sedgwick v. Knibloe,* 16 Conn. 219, 222 (1844) (detain has a particular meaning separate from either arrest or imprisonment). And see *State v. Carroll, supra* at p. 231, 38 A.2d at p. 801.

It has been held that the right to arrest for state offenses is governed by state law, *Ker v. California,* 374 U.S. 23, 88 S. Ct. 1623, 10 L. Ed. 2d 726 (1963). Thus while a state's authority to expand its power of arrest is subject to federally circumscribed limits, it does not follow that the expansion of these limits by the federal courts necessarily constitutes a similar expansion of state authority.

These issues are referred to mainly to point out the threshhold considerations which should be passed upon before the merits of this case are considered. These issues include the basic question of whether Officer Connolly was prohibited by Connecticut law from making these seizures and whether the Connecticut Supreme Court was authorized to make a retroactive application of *Terry*

v. Ohio, supra; Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965).

In any event the defendant submits that upon the merits of this case an application of *Terry v. Ohio, supra,* is unwarranted.

The teaching of that case, as amplified by *Sibron v. New York,* 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968), appears to be that a seizure of the person of a citizen is authorized by the Fourth Amendment when an officer has reasonable grounds to believe that criminal activity is afoot and that once this authority is exercised a limited search may be in order if the officer has reasonable grounds to believe that the suspect may be armed and dangerous to the officer or to the public. *Ibid.*

The criteria for measuring a case claimed to fall within this doctrine requires a determination of whether or not the police officer has a right to stop and whether or not he has a right to search. The two requirements are distinct and the distinction is crucial in this case. Cf. *United States v. Nicholas,* 448 F.2d 622 (8 Cir. 1971). Notwithstanding the fact that the stop itself has been construed to be a seizure within the protection of the Fourth Amendment. *Terry v. Ohio, supra* at p. 21, fn. 16, the courts seem quick to recognize the existence of such a right upon grounds falling short of probable cause, e.g., *United States v. Nicholas, supra; Gaskins v. United States,* 262 A.2d 810 (D.C. 1970); *People v. Navran,* 483 P.2d 228 (Colo. 1971); *Commonwealth v. Berrios,* 437 Pa. 338, 263 A.2d 342 (1970).

While the case law recognizing this right to stop applies fairly broad standards in support of such action, the right to execute a search and seizure during this stop is more rigidly defined. The case law developed to date seems to support this distinction. Thus even the cases suggesting that a stop-and-frisk may be grounded on unreliable hearsay, in fact seek greater justification to support the frisk than they do to justify the prior stop.

This was clearly the case in *Ballou v. Commonwealth*, 403 F.2d 982 *cert. den.* 394 U.S. 909 (1 Cir. 1969); *United States v. Unverzagt*, 424 F.2d 396 (8 Cir. 1970) and *Gaskins v. United States*, *supra*. In each of these cases facts in addition to the hearsay were relied upon to justify the seizure.

In order for that seizure to be justified the police officer must observe facts which justify his belief that the suspect is armed and dangerous. *Commonwealth v. Berrios*, *supra*; *Commonwealth v. Clarke*, 219 Pa. Super. 340, 280 A.2d 662 (1971); *Finley v. People*, 488 P.2d 883 (Colo. 1971); *People v. Navran*, *supra*; *United States v. Dowling*, 271 A.2d 406 (D.C. 1970); *United States v. Lee*, 271 A.2d 566 (D.C. 1971); *United States v. Nicholas*, *supra*; *United States ex. rel. Richardson v. Rundle*, 325 F. Supp. 1262 (E.D. Pa. 1971). The appellee submits that such was not the case here.

The seizure here was not a search incidental to a stop. Rather it was a search, pure and simple. When Officer Connolly received his unreliable information he decided to make a seizure and to arrest if he found what he was told he might find. His intent was obvious. He did not plan to investigate. He planned to arrest. Nothing occurred between the tip and the seizure. The situation thus was not one where unexpected action suggesting possible resort to weapons justified a patdown. *Gaskins v. United States*, *supra*. Therefore to suggest that this was the street confrontation discussed in *Terry v. Ohio*, *supra*, and *Sibron v. New York*, *supra*, is not appropriate. In fact the Ohio decision in *State v. Terry*, 5 Ohio App. 2d 122, 214 N.E.2d 114 (1966) took pains to distinguish a stop-and-frisk from an arrest by pointing out that arrest is in part a matter of intent and therefore a search incidental to an arrest was distinguishable from a frisk which is justified by conduct occurring during a stop. The frisk occurs only when facts arising during the stop justify it. Thus motive is important. In this case the motive was search-and-arrest, not stop-and-frisk.

Further still the need for a seizure was never established. *Terry v. Ohio, supra,* indicates that the frisk-patdown-search becomes appropriate only when the officer is confronted by articulated facts evidencing the possibility that the suspect is armed and presently dangerous to the officer or to the public. *Terry v. Ohio, supra* at p. 24; *Sibron v. New York, supra* at p. 64.

The use of the term, presently dangerous, does not seem superfluous. Cases following *Terry v. Ohio, supra,* recognize the distinction between being armed and being armed and presently dangerous. *Commonwealth v. Bourke,* 218 Pa. Super. 320, 280 A.2d 425 (1971); *Commonwealth v. Clarke, supra; Finley v. People, supra.* This distinction also was recognized in a nonseizure case by Justice Abe in *State v. Goudy,* 52 Hawaii, 497, 479 P.2d 800 (1971) (dissenting opinion). The suggestion in this appeal is that *Terry v. Ohio, supra,* intended to hold that being armed is in all instances the same as being presently dangerous. The appellee suggests that this was not the rationale of that decision. *Terry v. Ohio, supra,* should not be interpreted as allowing searches based upon less than probable cause for violations of certain gun laws. Yet this is the implication if one accepts the argument that a policeman upon receipt of less than probable cause may stop a person and effectuate a search if that information relates to the suspects being armed. Such an argument would require repeal or amendment of the Fourth Amendment, since it would permit searches and seizures upon less than probable cause if a gun was in the picture.

The idea that the possible possession of a gun justifies an immediate search and seizure sharply clashes with Connecticut law. The laws of Ohio and New York may be such that the possession of a concealed weapon is a crime per se, and therefore a police officer could find greater justification for interfering with liberty in order to enforce such laws or to sense danger from their violation. However, Connecticut does not prohibit such activity. Article I, Section 15 of our Constitution, which has been in

effect since 1818, expressly guarantees the right of citizens to bear arms in their own defense. The statutory law dealing with the issuance of permits to carry guns is a model of administrative due process. 29-32b of the Connecticut General Statutes is set forth in the Addendum to the Supplemental Brief filed by this appellee prior to the Second Circuit's en banc delibreations and it evidences a strong public policy favoring the issuance of such permits. Finally the crime itself, 29-35, does not bar the carrying of concealed weapons but only the carrying of such weapons where no permit has issued. Thus it seems anomalous to suggest that a citizen in Connecticut by exercising this statutory and constitutional right impliedly agrees to waive the protection of the Fourth Amendment. Therefore the appellee submits that mere evidence that a man has a gun in his waistband does not warrant an intrusion upon his person. If this is not true under *Terry v. Ohio, supra*, then it is certainly true under the statutory and constitutional laws and public policy of Connecticut.

Finally the appellee would suggest that hearsay of the type involved in this case ought not to permit any intrusion upon Fourth Amendment protections. *Sibron v. New York, supra* at pp. 62-3 and *Terry v. Ohio, supra* at p. 27, both indicate that a police officer may not act solely upon a mere hunch or suspicion. *Spinelli v. United States, supra* at p. 416 and *Aguilar v. Texas, supra* at pp. 112-4, both held that hearsay must be proven reliable in order to establish that it is not merely the declarant's hunch or suspicion. It follows logically that if the policeman, a professional trained in criminal investigation, cannot act on his own suspicions or hunches, then his actions cannot be justified when based upon evidence which may be only the suspicion or hunch of a third-party layman.

C. No Probable Cause Existed to Arrest Williams After the First Seizure and No Right Existed to Justify a Search of the Car Without a Warrant

The appellee briefed to the Second Circuit the contention that whether or not the initial act of seizing the gun was proper, the subsequent searches were not. This point was not considered in the first opinion because the Court there concluded that the seizure was a valid basis for an arrest. The issue became irrelevant in the second opinion because the court decreed that the initial seizure was invalid. The appellee, however, suggests that this issue is distinct.

The right to make a general exploratory search of one's person rests upon the question of whether it is incidental to a valid arrest. *Draper v. United States*, 358 U.S. 307, 314, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959). A valid arrest only occurs when the officer has probable cause to believe that a crime has been or is being committed. *Brinegar v. United States*, 338 U.S. 160, 175, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949). In this case the sole basis for arrest was the prior seizure. This it is submitted did not justify an arrest.

When the appellee was arrested the only fact known to Officer Connolly was that he had a gun. To reiterate the point previously made, this fact did not evidence a crime under 29-35. No inquiry or check as to the existence of a permit was undertaken. Therefore no evidence of a crime existed. This being so the body search was improper and therefore the seizure of the heroin was likewise improper.

Finally the appellee submitted to the Second Circuit the argument that the search of the car was likewise improper. This would clearly be true if the arrest itself was invalid. However, even if the arrest was valid it was and is claimed that when the police searched the car, Williams was out of it, in custody and under the control of two officers. Under these circumstances the requirement

that a prior warrant be obtained was established. *Preston v. California*, 376 U.S. 364, 367-8, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964) appears to hold that once a suspect is out of the car and in the physical custody of the police the authority to conduct a warrantless search has ceased, and therefore any seizure occurring thereafter except pursuant to a proper warrant is forbidden. Cf. *Shipley v. California*, 395 U.S. 818, 89 S. Ct. 2053, 23 L. Ed. 2d 732 (1969). The appellee submits that this was the case here and therefore contends that the seizure of the machete was unlawful.

The appellee submits that all the items seized were illegally obtained and were thereafter used to convict him of crimes stemming from their possession. Such evidence violated his Fourth and Fifth Amendment guarantees as they are embodied in the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). Since no suggestion has been made in any brief or ruling to date that the validity of the exclusionary rule is in issue the appellee has not directed himself to this point. However, such a discussion would in any event seem totally academic, since 54-33f of the Connecticut General Statutes prohibits the introduction into evidence of any illegally seized goods. Therefore the evidence would not be admissible in Connecticut even if the exclusionary rule were modified or abrogated entirely.

CONCLUSION

The appellee submits that the en banc decision of the Court of Appeals should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

Supreme Court, U. S.
FILED
MAR 23 1972
MICHAEL RODAK, JR., CLE

FREDERICK E. ADAMS,

Petitioner,

—v.—

ROBERT WILLIAMS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*; BRIEF *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

—v.—

ROBERT WILLIAMS,

Respondent.

Motion of the American Civil Liberties Union for Leave to File Brief *Amicus Curiae*

The American Civil Liberties Union respectfully moves, pursuant to Rule 42 of this Court's Rules, for leave to file the attached brief *amicus curiae*. Counsel for the petitioner has consented to the filing of the brief; counsel for the respondent has withheld such consent. Both letters have been filed with the Clerk of the Court.

The American Civil Liberties Union is a nationwide, non-partisan organization of over 170,000 members solely dedicated to defending the liberties guaranteed by the Bill of Rights. One of the most vital of those civil liberties is the right of privacy premised on the Fourth Amendment and reinforced by other Amendments as well. As a result of our concern with this central constitutional safeguard, which nourishes so many of our society's other values, we have participated in many of this Court's cases which have defined the scope of Fourth Amendment protection. Most relevantly, we filed briefs *amicus curiae* in *Terry* v. *Ohio*,

392 U.S. 1 (1968) and *Sibron* v. *New York*, 392 U.S. 40 (1968), the two cases which bear directly on the issues herein.

The purpose of this brief is to suggest to the Court the larger doctrinal context in which the specific issue must be decided. It is our understanding that *amicus* briefs have been filed urging greater police powers to initiate street confrontations with our citizens. We think it vital that this Court reaffirm the strict limits which must circumscribe such authority. We believe that this brief will assist the Court in reconciling these interests.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

—v.—

ROBERT WILLIAMS,

Respondent.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The interest of the American Civil Liberties Union is set forth in the preceding motion for leave to file this brief.

Introduction and Summary of Argument

The issue in this case arises out of a police-citizen street confrontation of the kind analyzed by this Court in *Terry* v. *Ohio,* 392 U.S. 1 (1968) and *Sibron* v. *New York,* 392 U.S. 40 (1968). In those cases, *amicus* urged that all such confrontations must be governed by the strict requirements of the Fourth Amendment. We still adhere to that analysis. But this Court disagreed, and accordingly this brief is premised on the understanding that *Terry* and *Sibron* provide the relevant rules of decision bearing on the issues here.

Conversely, it is equally important to note that the issues here in no way involve this Court's unbroken line of authority which holds that police officers may not effect an arrest without meeting the rigorous Fourth Amendment requirements of probable cause. No matter what type of criminal activity is involved, an *arrest* can only be made on probable cause. As this Court reaffirmed just a few weeks ago,

> We allow our police to make arrests only on "probable cause", a Fourth and Fourteenth Amendment standard applicable to the States as well as to the Federal Government. *Papachristou* v. *City of Jacksonville*, —— U.S. ——, 40 U.S. Law Week 4216, 4220 (1972) (footnotes omitted).

A.

However, with regard to police-citizen confrontations on less than probable cause, relevant distinctions as to the kind of criminal activity to be prevented can be made. In short, such encounters can be justified only if limited to investigations of serious crimes involving a reasonably immediate threat to persons or property. *Terry* v. *Ohio, supra.* This distinction—between investigations of serious criminal activities and enforcement of legislation against "victimless crimes"—is implicit in many of this Court's decisions. It is not coincidental that many of the major Fourth Amendment decisions of this Court have come in the context of prosecutions for violations of morals legislation. *Compare, e.g., Mapp* v. *Ohio,* 367 U.S. 642 (1961) (possession of obscenity) and *Spinelli* v. *United States,* 393 U.S. 410 (1969) (gambling), *with Terry* v. *Ohio, supra* (armed robbery). Thus, any further relaxation of the

Fourth Amendment to encompass morals offenses poses unique dangers to privacy. *Brinegar* v. *United States*, 338 U.S. 160, 180-89 (1949) (dissenting opinion). Accordingly where, as here, the suspected criminal activity involves a crime such as possession of narcotics, the relaxed standards of *Terry* v. *Ohio* should be inapplicable.

B.

Assuming *arguendo* that the rationale of *Terry* is extended from "serious" crimes to those offenses designed to shield persons from themselves, nevertheless, the officer here did not possess sufficiently trustworthy information to justify the confrontation. Neither the fact that the petitioner was seated in an automobile in a high crime area late at night, nor the information provided by an alleged tipster satisfied the *Terry* standard of "articulable suspicion." If there is to be a lowering of the quantum of information necessary to justify a police-citizen encounter, it is particularly important that police officers be required to insure that their action is based on something substantial. Moreover, the flimsy quality of the tip is made even more suspect by the police refusal to supply the tipster so that meaningful judicial review could be accomplished. *McCray* v. *Illinois*, 386 U.S. 300 (1967); *People* v. *Verrecchio*, 23 N.Y.2d 489 (1969). And again, in the context of this case, the combination of inadequate information and inadequate procedure are particularly subversive of Fourth Amendment values.

C.

Finally, even if defensive frisks by officers investigating serious crimes are to be allowed on less than probable cause, it does not necessarily follow that the fruits of such frisks should be admissible in a criminal prosecution. Certainly, since the sole purpose of the *Terry* exception to the probable cause requirement is the protection of the officer, where contraband other than deadly weapons is discovered, it should be inadmissible. If a frisk for lethal weapons can become an exploratory search for narcotics, then the *Terry* exception will inexorably invite wholesale general searches. See *Chimel* v. *California*, 395 U.S. 752, 763 (1969). Similarly, even as to the discovery of lethal weapons, since the only purpose for allowing a search on less than probable cause—the protection of the officer—has been secured, there is no further justification for utilizing the information obtained by a departure from Fourth Amendment standards. *Boyd* v. *United States*, 116 U.S. 616 (1886); cf. *Garrity* v. *New Jersey*, 385 U.S. 493 (1967). Such a rule would further a critical purpose of the exclusionary rule—"the imperative of judicial integrity." *Elkins* v. *United States*, 364 U.S. 222 (1960).

Police-citizen confrontations on less than probable cause must be confined to field investigations of serious crimes involving a reasonably immediate threat to persons or property.

In *Terry* v. *Ohio*, 392 U.S. 1 (1968), this Court empowered police officers to initiate police-citizen confrontations upon "articulable suspicion" less than probable cause that serious criminal activity was afoot, and to conduct a limited "defensive" frisk of persons so confronted when the police officer involved reasonably believes such persons to be armed and dangerous. As Mr. Justice Harlan's concurrence in *Terry* noted, the threshold analytical issue in such cases is the nature of the suspected criminal activity which would justify a police officer in initiating a police-citizen encounter on less than probable cause. 392 U.S. at 33. The corrosive impact upon the Fourth Amendment of permitting serious intrusions upon personal liberty on less than probable cause requires that a *Terry* "frisk" be confined to investigations of *serious* criminal activity posing a reasonably immediate threat to persons or property. In the absence of such a reasonably immediate threat, no relaxation of traditional probable cause safeguards is constitutionally tolerable.

In *Terry*, the police officer was confronted with information which raised an "articulable suspicion" that a serious crime (burglary) was imminent. Accordingly, this Court recognized his right to initiate a forcible police-citizen encounter and to conduct a defensive frisk. However, in *Sibron* v. *New York*, 392 U.S. 40 (1968), where the suspected criminal activity was possession of narcotics, a crime not

posing an immediate threat to person or property, this Court refused to sanction a *Terry*-type frisk on less than probable cause.

Thus, when "serious" crimes, such as murder, rape and robbery are reasonably suspected,[1] *Terry* sanctions a forcible investigative encounter between a policeman and a suspect coupled with a narrow defensive frisk on mere "articulable suspicion." However, when "morals" offenses, such as gambling, prostitution or possession of narcotics are suspected, *Sibron* forbids a forcible investigative encounter, with its attendant defensive frisk, on less than probable cause.

It is, we submit, no coincidence that those cases which have shaped the growth of the Fourth Amendment in the 20th century have overwhelmingly involved police attempts to enforce "victimless crimes" by the most effective means open to them—systematic intrusions into the sphere of personal privacy protected by the Fourth Amendment.

Thus, *Weeks* v. *United States*, 232 U.S. 383 (1914) involved an arrest for violating anti-gambling laws; *Wolf* v. *Colorado*, 338 U.S. 25 (1949) involved conspiracy of a practicing physician to commit abortion; *Mapp* v. *Ohio*, 367 U.S. 643 (1961) involved possession of obscenity; *Beck* v. *Ohio*, 379 U.S. 89 (1964) involved possession of gambling slips; *Aguilar* v. *Texas*, 378 U.S. 108 (1964) involved possession of narcotics; *Sibron* v. *New York*, 392 U.S. 40 (1968), involved possession of narcotics; and *Spinelli* v. *United States*, 393 U.S. 410 (1969), involved violation of gambling laws. On the other hand, cases involving "serious" as opposed to "victimless" criminal activity have received

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[1] The substantive standards which govern reasonable suspicion are discussed in Point II, *infra*.

a far different reception in this Court. *Draper* v. *United States,* 358 U.S. 307 (1959) involved the sale of heroin; *Warden* v. *Hayden,* 387 U.S. 294 (1967) involved armed robbery; *McCray* v. *Illinois,* 386 U.S. 300 (1967) involved the sale of heroin; *Terry* v. *Ohio,* 392 U.S. 1 (1968) involved armed robbery; and *Peters* v. *New York,* 392 U.S. 40 (1968) involved burglary.

As Mr. Justice White noted in his concurrence in *Spinelli* v. *United States, supra,* at 423-29, "tension" exists between cases such as *Aguilar* and *Spinelli* and cases such as *Draper.* Amicus respectfully suggests that the source of that "tension" may be found in Mr. Justice Jackson's dissent in *Brinegar* v. *United States,* 338 U.S. 160, 180-89 (1949), where he recognized the special dangers which morals legislation pose to the Fourth Amendment. This Court has recognized in case after case, that any relaxation of the protection of the Fourth Amendment in the area of victimless crimes, exposes the "right to be let alone" [2] to relentless pressure from law enforcement agencies seeking to enforce morals legislation. Given the fact that under the best of circumstances, the detection of "victimless crimes" involves significant intrusions into the sphere of privacy protected by the Fourth Amendment, the relaxation of probable cause announced in *Terry* in the context of serious crimes should not be extended to police investigations of alleged violations of criminal laws designed primarily to protect persons from themselves.

Since, in the instant case, the suspected criminal activity which triggered Officer Connolly's encounter with Williams involved possession of narcotics, the relaxed standards of

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[2] *Olmstead* v. *United States,* 277 U.S. 438, 478 (1928) (dissenting opinion).

Terry should be inapplicable and the propriety of Officer Connolly's search must be tested against traditional Fourth Amendment requirements of probable cause. Under such traditional standards, the searches involved herein were clearly unlawful. *Beck* v. *Ohio, supra.*

II.

No sufficient basis existed to initiate a police-citizen confrontation under *Terry* v. *Ohio.*

Even if the rationale of *Terry* v. *Ohio, supra,* is extended from "serious" crimes to those offenses designed to shield persons from themselves, the information available to the police officer here did not satisfy the standard of "articulable suspicion" of criminal activity required to initiate a police-citizen confrontation. Neither the substantive quality of the information available to Officer Connolly nor the procedural posture in which it was presented to the reviewing court, justified police insistence upon a forcible encounter.

A. *The Substantive Quality of the Information Available to the Police Officer*

Officer Connolly relied upon two elements in determining to initiate the police-citizen encounter which culminated in this appeal.

First, he relied upon his personal observation of Williams sitting alone in a parked car at 2:15 A.M. in a "high-crime" area. As Chief Judge Friendly pointed out below, such an observation alone could not even remotely have justified an encounter between Officer Connolly and Williams. See, e.g., *Henry* v. *United States,* 361 U.S. 98 (1959). As this

Court has repeatedly emphasized, a policeman's subjective "hunches," even though formed in good faith, may not found the basis of a police-citizen confrontation. E.g., *Beck* v. *Ohio, supra; Terry* v. *Ohio, supra.*

Second, the officer relied upon the alleged[3] existence of an unnamed tipster who is said to have informed Officer Connolly that Williams was armed with a pistol and had narcotics in his possession. Even if one accepts the existence of the informer, the quality of his "tip" was insufficient to create the "articulable suspicion" of criminal activity required by *Terry.* At no time did the tipster inform Officer Connolly of the source of his "knowledge" that Williams was engaged in criminal activity; nor was any attempt made by Officer Connolly to explore the basis of the tipster's information to insure that it was not based upon mere rumor or hunch. E.g., *Spinelli* v. *United States, supra.*

While "hearsay" information may support the basis for a police-citizen encounter, the quality of such "hearsay" information must be subject to scrutiny to insure that rumor or hunch did not trigger an informant's actions. As Mr. Justice Harlan observed in *Spinelli,* an informant's tip must rest upon something more substantial than "a casual rumor circulating in the underworld" or "an offhand remark heard at a neighborhood bar." 393 U.S. at 416-17. Thus, in the instant case, where the unnamed tipster's

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[3] Chief Judge Friendly observed below:

> "It is cause for no small wonder that on the first suppression hearing, Officer Connolly never mentioned the informer but said he had responded to a police signal. In the subsequent hearing the informer appeared and the signal disappeared." 436 F.2d at 36, n. 4.

information may have been the result of casual rumor or subjective hunch, Officer Connolly was not justified in initiating a forcible encounter without exploring its foundation at greater length. Just as Officer Connolly's own subjective hunch could not have justified his forcible encounter with Williams, the unverified subjective hunch of an unnamed informant cannot found the basis for the substantial interference with the person permitted under *Terry*. It would be a strange rule of law indeed which forbade a police officer from acting on his own subjective "hunch," but encouraged him to act on the unverified subjective hunches of anonymous tipsters. At the very least, therefore, Officer Connolly was under a threshold substantive obligation to explore the source of his tipster's information before acting upon it.[4]

Such a threshold obligation is all the more important in view of the relaxation in *Terry* of the quantum of substantive information needed to justify a "stop and frisk." Given the lowering in *Terry* of the quantum of information needed to justify a police-citizen encounter, police officers must be placed under a strict duty to insure that the information upon which they ultimately initiate a forcible encounter with a citizen is founded upon something more substantial than an anonymous tipster's "hunch." Cf. *Aguilar* v. *Texas, supra*. Such a duty would safeguard the critical Fourth Amendment values of privacy which are the hallmark of a free society, while permitting expeditious

[4] Such an exploration need not unduly interfere with expeditious police action. In this case, Officer Connolly might have satisfied the requirement by merely asking his informant, "How do you know?" In other situations, where it is obvious that a tipster's information is based upon something more substantial than mere rumor or hunch, additional investigation might be unnecessary.

and effective investigation of tips based upon credible foundations.

B. *The Procedural Posture of the Information Available to the Police Officer*

This Court has repeatedly emphasized the importance of insuring meaningful judicial review of the circumstances surrounding police-citizen encounters in order to assure that the protections of the Fourth Amendment are not relegated solely to the good faith of the police. E.g., *Beck* v. *Ohio, supra; Aguilar* v. *Texas, supra; Spinelli* v. *United States, supra.* As this Court stated in *Terry*:

> "The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard. . . . Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." 392 U.S. at 21-22 (footnotes omitted).

However, the procedural posture in which the information which allegedly justified Officer Connolly's investigative frisk of Williams was presented to the reviewing court made the "detached, neutral scrutiny of a judge" all but impossible.

Most importantly, the identity of Officer Connolly's alleged tipster was never revealed. Nor was any explanation

offered at the suppression hearing as to why resort to an anonymous hearsay tipster was necessary to advance any compelling state interest. Cf. *Roviaro* v. *United States*, 353 U.S. 53 (1957).

Although in *McCray* v. *Illinois*, 386 U.S. 300 (1967), a 5-4 majority of this Court sustained the use of an anonymous informant to establish probable cause for an arrest, the circumstances surrounding the *McCray* tip were, nevertheless, subject to meaningful judicial review. In *McCray*, the informant had been successfully utilized by the police officer in question on twenty separate occasions and had personally observed the defendant selling narcotics at a specific location. The substantive specificity of the informant's allegations, coupled with the readily verifiable use of the informant on numerous previous occasions, permitted a reviewing court to exercise a meaningful review of the reasonableness of the police encounter at issue in *McCray*. However, with the relaxation of the requirement of substantive content in *Terry*, the internal specificity of an informant's allegations can no longer be counted upon to provide a reviewing court with a "handle" to review the propriety of police action under the Fourth Amendment. In the absence of the objective criteria of internal consistency and corroboration which ordinarily permit a reviewing court to exercise meaningful judicial review in probable cause situations, a magistrate, faced with the dilemma of affording meaningful judicial review in "articulable suspicion" cases under *Terry*, must be assured at a minimum, that the alleged tipster actually exists. The inevitable result of sanctioning the use of anonymous tipsters in "articulable suspicion" cases would be to place the values of the Fourth Amendment wholly at the mercy of police officers. A reviewing magistrate,

deprived of any opportunity to verify the existence of anything more than an "inarticulate hunch," would be reduced to a rubber stamp, and the Fourth Amendment would be reduced to a mere admonition—to be ignored at will.

As Chief Judge Friendly noted below, in framing a general rule to control the mis-use of unnamed informers in "articulable suspicion" cases, the danger of *post-hoc* police fabrication of a non-verifiable tipster cannot be ignored. The highly delayed and suspicious emergence of the unnamed tipster in the instant case bears mute witness to the capacity for abuse inherent in a rule sanctioning anonymous hearsay which does not even satisfy the substantive content criteria of *McCray*. See, generally, Skolnick, *Justice Without Trial*, 227-28 (1966).

Just as this Court ruled in *Spinelli* v. *United States, supra,* that police may not initiate a forcible encounter upon the unverified tip of an unnamed informer, so a magistrate seeking to perform his duties conscientiously under *Terry* should not be compelled to accept the existence of an unnamed, unverifiable tipster whose story, by definition, lacks the sufficient detail present in both *Draper* v. *United States, supra* and *McCray* v. *Illinois, supra*.

Where, as here, an alleged informant a) is anonymous; b) is not objectively credible; c) does not divulge the basis for his "knowledge"; d) recites vague and general information not subject to internal corroboration; and e) does not demonstrate any basis for remaining unnamed, a magistrate is wholly prevented from conducting the "neutral," "detached" review of police conduct which is at the heart of the Fourth Amendment. Accordingly, police encounters based upon such alleged informer tips can-

not be condoned without, in the words of Chief Judge Friendly:

> "open[ing] the sluice gates for serious and unintended erosion of the protection of the Fourth Amendment." 436 F.2d at 39.

In *People* v. *Verrecchio*, 23 N.Y.2d 489, 245 N.E.2d 222 (1969), the New York Court of Appeals directed that the identity of an alleged informer be revealed when his vague and unverified accusation was the sole basis of a police-citizen encounter. The Court recognized that without some form of independent corroboration of the alleged informer's existence, a reviewing magistrate is rendered powerless to perform his duty.

Thus, in "articulable suspicion" cases, a police officer must be under a minimal threshold procedural obligation to ascertain the identity of his alleged informant, and to make his identity known to the reviewing magistrate—or else present some acceptable, alternative evidence of his existence.[5]

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[5] The Police Department of the City of New York has promulgated a form (UF 250) which must be completed by patrolmen acting in "articulable suspicion" cases under *Terry*. The form, a copy of which is reproduced as an appendix to this brief, requires the disclosure of an informant's identity. No justification exists for tolerating the initiation of police-citizen encounters without complying with the minimal procedural formalities spelled out by Form UF 250.

III.

The fruits of police-citizen confrontations on less than probable cause should not be admissible in criminal prosecutions.

The defensive frisk authorized by *Terry* as a protective device for police officers engaged in field investigation of serious crime was a significant dilution of the protection of the Fourth Amendment. Nevertheless, the demonstrated risk which a policeman faces during the investigation of a suspected "serious" crime appeared to compel the narrow, limited relaxation of probable cause enunciated in *Terry*. However, it does not follow that merely because this Court has recognized the "necessity" of such a defensive frisk, its fruits may indiscriminately found the basis for criminal prosecution. The question remains of the extent, if any, to which 1) non-lethal contraband and 2) dangerous weapons discovered pursuant to a *Terry* frisk may be utilized by the State in a subsequent criminal prosecution.

A. *Contraband Other Than Deadly Weapons Discovered Pursuant to a* Terry *Frisk*

The sole purpose of the limited exception to the probable cause protection of the Fourth Amendment sanctioned in *Terry* was the self-protection of the investigating officer. When the fruits of a *Terry* frisk, however, do not consist of material capable of having inflicted serious injury upon the investigating officer, no justification exists for permitting its use in a criminal prosecution. A *Terry* frisk is a species of limited purpose intrusion described by Mr. Justice Stewart in his concurrence in *Stanley* v. *Georgia*, 394 U.S. 557, 569 (1969), which may not be permitted to

ripen into a more general search without severely eroding the protection of the Fourth Amendment. Cf. *Sibron* v. *New York*, *supra*; *Marron* v. *United States*, 275 U.S. 192 (1927). Unless material incapable of inflicting serious injury is excluded from the fruits of a *Terry* frisk, the pressures to utilize the exception in *Terry* as a device to justify more general searches for contraband on less than probable cause will be inexorable. If non-lethal contraband is removed from the potential fruits of a *Terry* frisk, this Court will invite wholesale refinements of the *Sibron* fact pattern without the possibility of meaningful judicial review. The essentially subjective element of fear which ostensibly differentiated *Sibron* from *Terry* is, of course, extremely difficult to subject to meaningful judicial review. In effect, therefore, if police may hope to discover non-lethal contraband pursuant to a *Terry* frisk, we may anticipate a significant—and unreviewable—decline in the threshold of fear exhibited by metropolitan police seeking to enforce laws against gambling, prostitution and narcotics possession. The result would be the *de facto* enunciation of a subjective standard which this Court explicitly rejected in *Terry*. 392 U.S. at 21-22.

It may be argued that, since the purpose of the exclusionary rule is the deterrence of unlawful police-citizen confrontations and since the police-citizen confrontation epitomized in *Terry* is lawful, no basis exists for imposing an exclusionary rule upon the fruits of such a confrontation. However, this Court in *Terry* was careful to limit its sanctioning of frisks on less than probable cause solely to "protective . . . search[es] for weapons." *Id.* at 29, and expressly emphasized that "[t]he scope of [a *Terry*] search must be strictly tied to and justified by the circumstances which rendered its initiation permissible." *Id.* at 19. See also, *Chimel* v. *California*, 395 U.S. 752, 763 (1969). By

sanctioning the use of a *Terry* frisk to uncover non-lethal contraband, this Court would be virtually insuring that *Terry* will be neither confined to "protective" situations, nor strictly tied to the circumstances which rendered its initiation permissible. Thus, the imposition of an exclusionary rule upon non-lethal contraband seized as the fruits of a *Terry* frisk would be wholly in accordance with the rationale underlying *Mapp* v. *Ohio*, 367 U.S. 643 (1961), since it is the only practical device to insure meaningful judicial protection of the sphere of privacy which is the core of the Fourth Amendment.[6]

B. *Deadly Weapons Discovered Pursuant to a* Terry *Frisk*

Concern for the safety of police officers engaged in the investigation of serious crimes motivated this Court in *Terry* to recognize a narrow "defensive" exception to the probable cause rule. In effect, *Terry* recognized that the societal interest in protecting the lives of police officers outweighed the countervailing values protected by the Fourth Amendment in certain limited circumstances.[7] Having recognized that an overriding societal interest in ac-

---

[6] It may be argued that the non-lethal contraband which formed the basis of Williams' narcotics conviction was not the fruit of a *Terry* frisk, since it was seized pursuant to a search incident to Williams' arrest for possession of a weapon uncovered by a *Terry* frisk.

However, despite the erection of a technical justification for the search of Williams culminating in the discovery of non-lethal contraband, it is conceded that probable cause never existed to initiate a confrontation with Williams. Thus, absent the *Terry* frisk, no basis for conducting a search of Williams existed. Accordingly, to deny that the narcotics involved herein are the fruits of a *Terry* frisk confounds reality.

[7] Amicus believes that if such a dilution of the Fourth Amendment is to occur, it should be pursuant to constitutional amendment, rather than judicial construction. *Terry* v. *Ohio*, 329 U.S. 1, 39 (1968) (Douglas, J. dissenting).

quiring certain information (whether a suspect is armed with a deadly weapon) compels a dilution of the Fourth Amendment's guaranty of personal inviolability, this Court must decide the permissible uses to which society may put the information which it has obtained pursuant to procedures which concededly fall below the norms prescribed by the Fourth Amendment. Amicus believes that use of the coerced information should be confined to the overriding purpose which justified its acquisition—the safeguarding of a police officer's life. Once that purpose has been achieved, no further use of the information should be permitted.

In the closely connected area of the Fifth Amendment, when our society has found it necessary to coerce individuals to divulge information pursuant to procedures which fall below the norms prescribed in the Fifth Amendment, we have refrained from utilizing the information as the basis of a criminal prosecution against the individuals concerned. Thus, public officials may, upon pain of dismissal, be compelled to divulge information for which society alleges an overriding need. However, information so divulged may not be utilized as the basis of subsequent criminal prosecutions against them. See, e.g., *Garrity* v. *New Jersey*, 385 U.S. 493 (1967). Society, thus, satisfies its limited need for certain information without sacrificing or unduly weakening the constitutional protections which safeguard us all. Similarly, in the Fourth Amendment area, when society finds it necessary to compel the disclosure of information pursuant to procedures which do not satisfy the Fourth Amendment, it must not be permitted to utilize such "tainted" information, except to

[8] *Boyd* v. *United States*, 116 U.S. 616, 633 (1886).

satisfy the need which initially justified the compulsory disclosure. In the context of a *Terry* frisk, the societal need which authorized a search on less than probable cause is satisfied by the protection afforded to the investigating officer. Once that protection has been afforded, no further inroads upon the Fourth Amendment should be tolerated.

Of course, the imposition of an exclusionary rule upon deadly weapons seized as the basis of a *Terry* frisk would not be designed primarily to deter police misconduct, since the very purpose of the *Terry* rule is to permit police officers to unearth deadly weapons capable of inflicting harm upon them. It would, however, advance the second, critical purpose served by the exclusionary rule—"the imperative of judicial integrity." *Elkins* v. *United States,* 364 U.S. 206, 222 (1960); *Mapp* v. *Ohio, supra.* To the extent we permit our courts to receive and to act upon information gathered under procedures which are corrosive of constitutional guarantees, we sanction disrespect for and evasion of our most basic laws. As Mr. Justice Clark noted in *Mapp*:

> Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. 367 U.S. at 659; cf. *Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

Thus, if this Court deems it necessary to continue to permit *Terry* searches on less than probable cause, the proper conduct of such a search may continue to be recognized as a defense to an action under Title 42 U.S.C. §1983 without doing unnecessary violence to the underlying protection which the Fourth Amendment provides against governmental intrusions upon the inviolability of the person in the absence of probable cause.

CONCLUSION

Criminal cases posing Fourth Amendment issues are merely the visible tip of an iceberg of police-citizen confrontations. While the immediate issue before the Court in this appeal is the liberty of one alleged criminal, the effect of the Court's Fourth Amendment decisions are felt with astonishing immediacy by the residents of urban America. Indeed, the tone of life in large segments of metropolitan America is significantly affected by the extent to which this Court places effective limits upon the initiation of forcible police-citizen encounters. To millions of law-abiding Americans, the very real distinction between living in a police-state and living in a free society depends in large part upon the extent to which this Court evolves meaningful Fourth Amendment controls upon police behavior. The narrow exception recognized in *Terry*, out of concern for the safety of our police, must not be permitted to evolve into a convenient device for by-passing the Fourth Amendment.

Respectfully submitted,

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March 1972

Form UF 250, New York City Police Department

TIME and DATE OF STOPPING	PERIOD OF OBSERVATION PRIOR TO STOPPING	LOCATION	PCT.	POST	KIND OF PUBLIC PLACE

FACTORS WHICH CAUSED OFFICER TO REASONABLY SUSPECT PERSON STOPPED (Include information from third persons and their identity, if known)

CRIME SUSPECTED	How Long was Person Stoppped	REMARKS BY PERSON STOPPED

OFFICER IN UNIFORM	☐ YES ☐ NO	IF NO, HOW IDENTIFIED	☐ SHIELD ☐ I.D. CARD ☐ BOTH	WAS FORCE USED	☐ YES ☐ NO	IF YES, DESCRIBE

WAS PERSON FRISKED	☐ YES ☐ NO	WAS SEARCH INSIDE CLOTHES MADE	☐ YES ☐ NO	IF YES, DESCRIBE WHERE MADE AND BASIS FOR INSIDE SEARCH

Was Weapon Found	☐ YES ☐ NO	IF YES, DESCRIBE	Was Other Contraband Found	☐ YES ☐ NO	IE YES, DESCRIBE

NAME OF PERSON STOPPED (If given) and ADDRESS

DESCRIPTION	SEX	COLOR	AGE	HEIGHT	WEIGHT	HAIR	EYES	BUILD	OTHER (Describe)

IF PERSON STOPPED IS SUBSEQUENTLY ARRESTED, INCLUDE ADDITIONAL FACTORS WHICH LED TO ARREST

CRIME CHARGED	CONTRABAND FOUND IN POST-ARREST SEARCH	COURT IN WHICH CASE PENDING

RANK	SIGNATURE OF REPORTING OFFICER	SHIELD	COMMAND	RANK	SIGNATURE OF SUPERIOR OFFICER	COMMAND

REPORT OF STOPPING BY FORCE OR STOPPING ACCOMPANIED BY FRISK U.F. 250 (7-64)

AMICUS CURIAE BRIEF

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No. 70-283

In the Supreme Court of the United States

OCTOBER TERM, 1971

FREDERICK E. ADAMS, WARDEN,
CONNECTICUT STATE PRISON, PETITIONER

v.

ROBERT WILLIAMS, RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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INTEREST OF THE UNITED STATES

The United States has a direct interest in the standards delineating the power of law enforcement officers to detain persons without formal arrest in the course of investigating crime. Police employed by various agencies of the United States patrol the streets of the District of Columbia, and frequently encounter situations similar to that in the present case. See, *e.g.*, *United States* v. *Frye*, 271 A. 2d 788, 791 (D.C. C.A.). Moreover, while federal investigative agents do not exercise the broad powers of local police, they are not

infrequently confronted with situations where effective law enforcement requires a limited stopping of persons for the purpose of obtaining or verifying information. In addition, because investigations by local police officers frequently produce evidence of federal crime, the question whether such evidence was lawfully obtained has obvious consequences for federal law enforcement. The resolution of this case will necessarily affect standards governing the powers of law enforcement officials in carrying out their duties as approved in *Terry v. Ohio*, 392 U.S. 1.

Unlike *Terry* in which an officer had personally observed unusual conduct warranting a brief "stop," this case concerns the power of a law enforcement official to stop a suspect and undertake a limited search for weapons on the basis of information received from another individual. The *per curiam* opinion by the *en banc* majority below (A. 85) leaves in doubt the precise reasons why it found the actions of the officer in this case improper, but Chief Judge Friendly's dissent in the initial panel suggests that, at least with respect to many kinds of crimes, an officer may not engage in an investigative "stop" on the basis of information obtained from another individual unless the information is "well authenticated" (A. 78). In our view, law enforcement officials, and particularly officers on patrol, should be able, under appropriate circumstances, to act upon information brought to their attention by persons who are known to them or who appear trustworthy even though sufficient grounds for an arrest may be lacking.

STATEMENT

In the early morning hours of October 30, 1966, Sgt. John Connolly of the Bridgeport Police Department was on car patrol duty in a high crime area of Bridgeport, Connecticut (A. 89–91). At approximately 2:15 A.M., while he was seated in his car in a parking area adjacent to a service station, a person known to him came up to his car and advised him that an individual sitting in a nearby vehicle was carrying narcotics and also had a gun at his waist (A. 90).

After calling for assistance on his car radio (A. 97), Sgt. Connolly approached the vehicle, tapped on the window and asked the occupant, Robert Williams, who was in the driver's seat, to open the door. The occupant rolled down the window instead. Concerned for his safety in a situation of particular danger to police officers,[1] Sgt. Connolly reached into the car and removed a revolver from the waistband of the occupant's trousers (A. 91). The gun had not been visible to Sgt. Connolly as Williams was seated in the vehicle (A. 91). Connolly then placed Williams under arrest. A search of Williams, following the arrival of other officers, revealed six packs of heroin in a jar which was found in the pocket of his coat. An additional 21 packs of heroin were found in the car along with a machete under the front seat. A second revolver was found in the trunk of the vehicle (A. 91, 97).

[1] One study indicated that 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. Criminal L.C. & P.S. 93.

During the suppression hearing Sgt. Connolly testified that he had known the informant since 1965.[2] On one occasion she had given him information regarding homosexual activity at the Bridgeport Railroad Station. While no arrest was made as a result of the investigation which followed, Sgt. Connolly was satisfied that the information was accurate. He explained that the individuals apparently engaging in the activity became aware that they were being observed by him and left the railroad station before there was sufficient basis for an arrest (A. 96–97). On the basis of this incident as well as other conversations with the informant, Sgt. Connolly was satisfied that the informant "was a reasonably trustworthy person." (A. 96).

The respondent's motion to suppress the evidence obtained by Sgt. Connolly was denied by the Superior Court for Fairfield County, Connecticut. The respondent was then tried and convicted of carrying a pistol without a permit, possessing narcotic drugs and having a weapon in a motor vehicle operated by him (A. 33).

The conviction was affirmed on appeal by the Supreme Court of Connecticut (157 Conn. 114, 249 A. 2d 245) and certiorari was denied by this Court (395 U.S. 927).

The respondent then filed a petition for a writ of habeas corpus in the United States District Court for the District of Connecticut which alleged that the evi-

[2] Sgt. Connally's testimony of the events following his approach to Williams' vehicle was not disputed by respondent.

dence seized by Sgt. Connolly was improperly admitted at his trial. The petition was denied after a hearing (A. 49).

The denial of the petition was affirmed by the court of appeals. The respondent then moved for a rehearing *en banc* (A. 80). The motion was granted and upon rehearing the order of the district court was reversed (A. 85).

On January 10, 1972, this Court granted the petition of the State of Connecticut for a writ of certiorari to the court of appeals (A. 88).

SUMMARY OF ARGUMENT

In *Terry* v. *Ohio*, 392 U.S. 1, a case in which a police officer acted on the basis of his own personal observation, this Court upheld the right of law enforcement officers briefly to stop persons suspected of criminal behavior for investigative purposes even though the facts upon which the officers' suspicions are based do not constitute probable cause to make an arrest. There is no valid basis in the Fourth Amendment or in common sense for limiting *Terry* to circumstances in which the officer relies on his personal observations.

Police officers on street patrol are frequently approached by persons relating information regarding criminal activity which requires an immediate response short of an arrest. A requirement that police officers personally authenticate the information given or establish the reliability of the person supplying the information before taking some action would

often be tantamount to a direction that no action be taken.

Since individuals who are known to the police officers or who are willing personally to approach them are not likely deliberately to supply false information, police officers should be permitted to act on such information by stopping the suspect briefly for investigative purposes. Allowing police to act upon such information creates no greater risk of fabrication than is present when the justification advanced for a stop is the officer's own observations.

The officer in this case acted upon information given him by someone whom he had good reason to believe was reliable and his actions on the basis of that information should be upheld as reasonable under the Fourth Amendment.

ARGUMENT

A LAW ENFORCEMENT OFFICIAL MAY LAWFULLY INSTITUTE AN INVESTIGATIVE "STOP" EVEN THOUGH HIS ACTION IS PREDICATED UPON INFORMATION OBTAINED FROM OTHERS

This Court, recognizing that the protean nature of street encounters between citizens and police officers defies comprehensive analysis, has concluded that the reasonableness of a brief detention for investigative purposes may only be determined by an evaluation of the facts of the particular case. *Terry* v. *Ohio*, 392 U.S. 1, 13, 15. Whether an officer is justified on the basis of circumstances he has observed in briefly stopping a person for investigative purposes and undertaking a protective search for weapons depends

upon a judicial assessment of whether "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted that intrusion" (392 U.S. at 21).

In *Terry* the personal observations of the law enforcement officer justified the "stopping" and "frisking" of the suspects. While personal observation of the officer certainly supplies one reasonable basis for a brief stop for investigative purposes, it would be unrealistic to limit a law enforcement officer's response to such situations alone, short of a formal arrest.

Police officers patrolling city streets frequently have their attention called to possible criminal activity which they have not themselves observed. A police officer is approached by a local businessman who relates his observation of an individual acting suspiciously in his store;[3] a taxi driver says that he observed a man walking down the street tuck a gun under his waist;[4] a woman claiming to have been the victim of a robbery gives the police a description of the individual who, she claims, took her purse.[5] In each of these cases an officer should be able to recognize it as his duty to do something more than simply shrug his shoulders and walk away. It can hardly be appropriate for him to say that he can do nothing because there is no probable cause to arrest the suspect.

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[3] *People* v. *Hudson*, 27 N.Y. 2d 911, 265 N.E. 2d 925.

[4] *Gaskins* v. *United States*, 262 A. 2d 810 (C.A. D.C.)

[5] *Daniels* v. *United States*, 393 F. 2d 359 (C.A. D.C.)

Most persons willing to approach police officers will not deliberately supply them with false information, and in the realm of these on-the-spot investigations, a law enforcement response must occur immediately or not at all. There is typically no time for the officer to "authenticate" the information given or to take meaningful measures to assure himself of the reliability of someone not previously known to him. Frequently, an officer will not have time to conduct even a brief interview of the person.

Given these facts as well as the limited scope of the intrusion involved in an investigative "stop" and "frisk," we think the court of appeals was mistaken in suggesting that the information provided must be authenticated before an officer can take action predicated upon it.[6] Such a standard may well be necessary where the police officer seeks to take an individual into custody to answer for a crime and conduct a full blown search. *Spinelli* v. *United States*, 393 U.S. 410; *Draper* v. *United States*, 358 U.S. 307. But where a police officer seeks only to stop an individual briefly on the street to investigate activity which he has some ground to regard as suspicious, or conduct a very limited self-protective search for weapons, a lesser quantum of evidence will suffice to justify the

[6] Chief Judge Friendly suggested in his dissenting panel opinion that in all cases, except those involving violent crimes, an investigative "stop" would be justified only where "observation by the officer himself or well authenticated information shows 'that criminal activity may be afoot'" (A. 78). The opinion is unclear as to whether information from a previously reliable informant may suffice or whether independent corroboration is always necessary.

intrusion. As this Court observed in *Terry*, "reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment" (392 U.S. at 27).

A number of cases have confirmed the authority of police briefly to stop a suspect for investigative purposes where the police officer is acting solely on information obtained from others whom he has no reason to distrust. In *Gaskins* v. *United States*, 262 A. 2d 810, 811 (C.A. D.C.), in which a police officer was stopped by a taxi driver who told him that he had just seen "a guy up the street tuck a gun inside his belt," the District of Columbia Court of Appeals held that the police officer was justified in stopping and frisking the suspect. The court said: "It is clear that [the] Officer * * * was entitled to rely upon the information imparted to him by the cabdriver, *an eyewitness to the crime*, '[w]ho it [seemed] reasonable to believe [was] telling the truth'" (262 A. 2d at 811; emphasis in original).

In *Daniels* v. *United States*, 393 F. 2d 359, the United States Court of Appeals for the District of Columbia Circuit in a *per curiam* opinion (Bazelon, Wright and Leventhal, J. J.), upheld a police officer's stopping of a suspect based upon a description provided by

a woman who claimed to have been the victim of a robbery. The court observed that the action was justified by information which it was reasonable to believe was truthful.

In *In re Boykin,* 39 Ill. 2d 617, 237 N.E. 2d 460, the police were advised by the principal of a school that he had received an anonymous tip that one of the students at the school was carrying a weapon. The Supreme Court of Illinois sustained the action of the police in calling the suspected student from class and searching him for the weapon. Justice Schaefer, writing for the court, noted "the complete absence of any possible element of gain to the * * * informant from furnishing false information" to the principal, and the necessity for an immediate police response under the circumstances of the case (39 Ill. 2d at 619, 237 N.E. 2d at 461–462). See also *Gaines* v. *Craven,* 448 F. 2d 1236 (C.A. 9); *People* v. *Hudson,* 27 N.Y. 2d 911, 315 N.E. 2d 925; *People* v. *Arthurs,* 24 N.Y. 2d 688, 249 N.E. 2d 462; *People* v. *Woods,* 6 Cal. App. 3d 832; *State* v. *Gordy,* 52 Hawaii 497, 479 P. 2d 800.

Common to these cases, as well as the instant case, is police action based upon otherwise uncorroborated information from sources which the police officer had no reason to distrust and in which his only alternative to stopping the individual for brief investigative purposes was to take no action at all. Indeed, since the officer in the instant case did have some prior basis for believing the informant to be reliable, his justifi-

cation for making the investigative stop was actually more substantial than that in most of these cases.

We recognize that when an officer acts on the basis of information received from another, the observations of the individual providing the information will normally not be available for judicial scrutiny. Thus, the risk that information may derive from "a volatile or inventive imagination" (*Terry*, 392 U.S. at 28) is present. But this risk is much more serious when law enforcement officials respond to tips from anonymous sources[1] than when the officer personally talks with the citizen who provides information. When the officer confronts an individual, he can exercise some judgment as to whether the information is likely to be accurate, and, as we have indicated earlier, most persons, particularly those known to the police officer, will not deliberately supply false information in a face-to-face encounter with the officer.

A different kind of risk, and one that was of particular concern to Chief Judge Friendly (A. 77), is that an officer will fabricate an informant's tip as a means of justifying a seizure, pursuant to a protective "frisk," which in reality is predicated solely upon the officer's "hunch." But the possibility of fabrication is

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[1] Where the tip is from an "anonymous" source, perhaps additional corroboration may be required except in exigent circumstances. See, *e.g.*, *Ballou* v. *Massachusetts*, 403 F. 2d 982, 986 (C.A. 1), certiorari denied, 394 U.S. 909; *People* v. *Taggart*, 20 N.Y. 2d 335, 229 N.E. 2d 581. Compare, however, anonymous phone calls that there is a bomb on an airplane, and the current response of officers responsible for air safety in dealing with the risks involved.

equally present in cases involving the police officer's personal observations. Any standard governing police conduct, however strict, must necessarily rely to some extent on the good faith of law enforcement officials. *Ballou* v. *Massachusetts*, 403 F. 2d 982 (C.A. 1), certiorari denied, 394 U.S. 909. In the present case, for example, if the officer had no respect for truth, a much more convenient story would have been that as he walked over to the car he observed the gun protruding from respondent's waist.[5]

Moreover, there are practical ways to minimize the risk of fabrication without forbidding action on the basis of unauthenticated information from third persons. The trial judge need not take the word of the police officer that an unnamed informant existed. The judge can conduct an *in camera* hearing to determine the name of the informant and otherwise satisfy himself of the informant's existence in cases in which there is any reason to suspect fabrication. See, *e.g.*, *United States* v. *Winters*, 420 F. 2d 523, 524 (C. A. 3); *United States* v. *López*, 328 F. Supp. 1077, 1091 (E.D.N.Y.); Revised Proposed Rules of Evidence for

[5] Chief Judge Friendly's passing doubts as to whether an informant really existed in this case (A. 72 n. 4, 77 n. 8) are not well founded. Sgt. Connolly's testimony about the informant at trial (A. 95–101) does not have the ring of fabrication, and the stricken question of defense counsel whether the informant was named Jane Cooper suggests an absence of doubt as to the informant's reality. Sgt. Connolly's failure to mention the informant at the original suppression hearing is understandable in light of the questions put to him by the prosecutor at that hearing (Tr. 12–13).

United States District Courts and Magistrates, Rule 510(c)(3) (March, 1971).[*]

In cases involving citizen informants, the police should be required "to make every reasonable effort commensurate with the circumstances to obtain and record the identity of their informants in these moving street scenes," since that will enable the police "to locate and identify later the person who gave the information, and thereby go far to remove from subsequent prosecutions the troublesome factors of the unknown and unidentified and uncorroborated informant." *United States* v. *Frye*, 271 A. 2d 788, 791 (D.C. C.A.). These procedures can provide far greater corroboration of the officer's testimony in cases in which he acted upon the information of others than in those cases in which he claims to have acted on the basis of his own observations.

In his opinion, Chief Judge Friendly advanced the suggestion that perhaps *Terry* should not be extended to crimes like the possession of narcotics,

[*] Rule 510(c)(3) provides as follows:

"If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable, he may require the identity of the informer to be disclosed. The judge may permit the disclosure to be made *in camera* or make any other order which justice requires. All counsel shall be permitted to be present at every stage at which any counsel is permitted to be present. If disclosure of the identity of the informer is made *in camera*, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal."

since it affords the police an excuse to look for narcotics under the guise of a protective search for weapons. "There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true." (A. 76; see also La Fave, "*Street Encounters*" *and The Constitution: Terry, Sibron, Peters and Beyond*, 67 Mich. L. Rev. 40, at 66 (1968)).

This argument, we believe, ignores the limitations placed on the police officer's right to search for weapons. Both in *Terry* and *Sibron* v. *New York*, 392 U.S. 40, this Court emphasized that circumstances which give rise to the right to stop for investigative purposes do not automatically justify a protective search for weapons. Such a search is permitted only where the police officer is "justified in believing" that the suspect may be armed. In *Terry* the fact the defendant was suspected of being involved in a crime which might reasonably entail the use of weapons was sufficient to justify the police officer's suspicion that the suspect was armed where nothing in the initial encounter served to dispel that fear. On the other hand, in *Sibron*, a case in which the officer suspected the defendant of being engaged in the selling of narcotics, there were no facts found to justify a protective search for weapons although the Court indicated the

initial "stop" may have been justified (*Sibron*, 392 U.S. at 63). Moreover, the restricted nature of the frisk itself tends to limit the extent to which the procedure may be abused. A police officer can only remove objects feeling like weapons. Narcotics are not typically packaged in a manner that would make the assertion that they felt like a weapon plausible. See, *e.g.*, *People* v. *Armenta*, 268 Cal. App. 2d 248, 73 Cal. Rptr. 819.

In sum, we believe it is consistent with the standard of reasonableness embodied in the Fourth Amendment to recognize a power in law enforcement officers to engage in a brief investigative detention and, if necessary, a search for weapons, on the basis of information supplied by persons known to them or by persons who appear to be responsible citizens. In the present case, the police officer acted on the basis of specific information he had obtained from an individual previously known to him and whom he had no reason to disbelieve. His action in approaching the vehicle was consistent with his duties as a police officer. Since a "frisk" of the suspect was impossible under the circumstances, his conduct in reaching for the weapon was a limited act necessary to protect himself in a situation which poses a particular hazard for police officers.[10]

[10] A striking illustration of the hazards which police officers face in approaching automobiles may be found in *United States* v. *Kearney*, 420 F. 2d 170 (C.A. D.C.).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MARCH 1972.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U. S.
FILED
APR 5 1972
MICHAEL RODAK, JR., CLERK

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

Argument

The petitioner in electing to file this reply brief does so for the purpose of answering certain items in the brief filed by the respondent. Obviously, petitioner will attempt to avoid repeating or reiterating the statements contained in his initial brief or matters covered by briefs of the Amicus Curiae. The petitioner intends to respond only to limited portions of respondent's brief.

I

The Connecticut Circuit Court Proceeding

The brief of the respondent and that filed by the American Civil Liberties Union both refer to testimony and more specifically to questions asked Sergeant Connolly at a preliminary hearing in the Connecticut Circuit Court. It should also be noted that the United States District Court conducted a full testimonial hearing specifically for the purpose of considering that testimony and to ascertain the true facts (A-49). During the preliminary hearing in the Connecticut Circuit Court, a prosecuting attorney in addressing several questions to Officer Connolly used the words "police signal" or "call". Officer Connolly himself never uttered either designation (A-12 to 14). Officer Connolly testified at the hearing in the District Court, and that Court specifically found that the facts as they appear in the Superior Court record were substantiated and were adopted as the findings of the District Court (A-51).

The respondent's reference to the lower court testimony is apparently included for the purpose of strategy in anticipation that this Court which never saw Sergeant Connolly or heard him testify may decide to overturn the determinations of the two lower Court Judges who did hear his testimony, and in the case of the United States District Court, the officer's explanation of his previous testimony.

II

The Officer's Investigation

The petitioner has previously discussed in detail his reasons in support of the propriety of Officer Connolly's decision to investigate the information received, at pages 9 through 11 of his initial brief. The matter is further thoroughly discussed in the briefs of the Amicus Curiae.

Petitioner views the activity of the officer in determining to make this investigation one of the two pivotal issues to be considered by the Court.

The position of the respondent on the question of Connolly's action in leaving the gasoline station and walking over to respondent's auto is not clear. At page 12 of his brief the respondent acknowledges that the Courts "seem quick to recognize the existence of such a right (to stop) upon grounds falling short of probable cause". Clearly, respondent does not expressly claim that the officer was in any manner constitutionally proscribed from investigating the information and does not quote any authority in support of such a position.

Petitioner submits that there does exist abundant authority for an officer's right to investigate information regardless of probable cause. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L. Ed. 2d 889; *U.S.* v. *James*, 452 F. 2d 1375, 1377 (1971).

III

The Officer's Seizure of the Pistol

The respondent at page 13 of his brief cites eight cases as authority for his proposition that in order to justify a seizure a police officer "must observe facts which justify his belief that the suspect is armed and dangerous." The assignment of the holdings of these cases to this legal principle is at best questionable and each of the eight cases can be clearly and emphatically distinguished from the instant factual situation.

Commonwealth v. *Berrios*, 437 Pa. 338, 263 A. 2d 342 (1970), involved a search of two men, one of whom happened to be a Negro in dark clothing and one whom was a Puerto Rican wearing light clothing. There was no information linking these two particular persons with criminal activity and the Supreme Court of Pennsylvania

quite clearly relied on this deficiency in holding "under these circumstances, then every Puerto Rican wearing light clothing and walking with a negro in this area could likewise be validly searched".

The Court in no way holds that a protective search for weapons must as a matter of law result from the officer's personal observation and cannot be predicated upon information received, and in fact clearly refers to the lack of sufficient information involving these subjects with the commission of a crime.

Likewise the decision of the Pennsylvania Superior Court in *Commonwealth* v. *Clarke*, 219 Pa. Super. 340, 280 A. 2d 662 (1971), is not a holding that an officer's concern for his safety cannot be based upon information received and must be based solely upon his observations. The Court expressly mentions that the officer in question had no information at all that a crime had been committed and does indicate that the existence of such information would have been relevant.

In *Finley* v. *People*, 488 P. 2d 883 (Colo. 1971), cited by respondent, the Court clearly stated that there was no evidence of any sort indicating that the subject may have been armed and even further the Court appeared satisfied that the officer knew that a bulge in the defendant's pocket was a roll of bills and was not removed in the belief that it was a weapon. Again quite clearly, the Court does not limit a protective search to the occasion where an officer has personally made particular observations.

The case of *People* v. *Navran*, 483 P. 2d 228 (Colo. 1971), likewise involves a situation where the officer had no basis at all for suspecting that the subject might be armed. The case involves two persons who drove an automobile into a driveway which was under surveillance after which they were immediately patted down and a plastic bag of marijuana was removed from the defendant's shirt pocket. The Court stated three requisites for a protective search as

follows: "There must be a) some reason for the officer to confront the citizen in the first place; b) something in the circumstances, including the citizen's reaction to the confrontation, must give the officer reason to suspect that the citizen may be armed and, thus, dangerous to the officer or others; and c) the search must be limited to a frisk directed at discovery and appropriation of weapons and not at evidence in general".

United States v. Dowling, 271 A. 2d 406 (D.C. 1970) cited by respondent, does involve a factual situation strikingly similar to the instant situation. Here officers do receive information from an unidentified and essentially unknown individual to the effect that a person wearing a long black overcoat had a gun in his pocket and had entered an adjacent alley. Investigation disclosed a subject in the alley and a protective search uncovered gambling paraphernalia. Citing *Terry* v. *Ohio*, ante, the Court quotes this Court's designation of the two areas to be examined in the consideration of a protective search, namely 1) whether the officer's action was justified at its inception; and 2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. The Court proceeds to resolve this dual inquiry in favor of the officers' actions under the circumstances and sustains the validity of the seizure.

United States v. *Lee*, 271 A. 2d 566 (D.C. 1971) involves essentially the seizure of a visible bulge beneath an individual's shirt with little or no additional justification. The Court sustains the seizure. Clearly this decision does not hold that specific information that a person is armed cannot justify a protective search.

In *United States* v. *Nicholas*, 448 F. 2d 622 (1971) the Court again applies the aforestated dual inquiry consideration originated in *Terry* and applied in *United States* v. *Dowling*, ante. Factually there existed no basis for any investigation except an auto with out of state

license plates and in determining this to be an insufficient basis for an intrusion the Court expressly includes within its holding the observations that 1) the police were not investigating any particular crime and 2) the police had *no information* respecting the car or its occupants.

Finally, the case of *United States ex rel. Richardson* v. *Rundle*, 325 F. Supp. 1262 (1971) cited by the respondent, involves a substantially different factual situation encompassing a police officer's search of an individual who *might* have been one of a number of youths observed running from the steps of a drug store. The Court aptly points out that the officer was not motivated by any fear for his personal safety; had no knowledge that any criminal act had taken place; and was unable to refer to any particular facts from which he could reasonably infer that criminal activity might be afoot.

The petitioner refers to these eight reported decisions exclusively for emphasizing that not one of the cases holds either directly or indirectly that specific information from a known source cannot be just as persuasive as observed activity in igniting police inquiry. The petitioner emphatically disputes that these eight decisions, or indeed any single one of them, stands for the proposition that an officer *must* personally observe activity or facts to justify a protective search.

Conversely it does appear that there is substantial authority that information received by a police officer may serve as the basis upon which he initiates an investigation or a protective search. Cf. *United States* v. *Sims*, 450 F. 2d 261 (1971); *Meade* v. *Cox*, 438 F. 2d 323, 324, certiorari denied, —— U.S. —— (1971); *U.S.* v. *Unverzagt*, 424 F. 2d 396 (1970); *Gaskins* v. *United States*, 262 A. 2d 810 (D.C. 1970).

Acknowledgement that the origin of an officer's investigation may be information which he receives in the line of duty may also be found in the case of *Sibron* v. *New*

York, 392 U.S. 40 at pages 62 and 63 where the Chief Justice makes express mention that Officer Martin had received no information concerning Sibron, and certainly indicates that information received might well be considered among the particular facts from which the officer infers that an individual is armed and dangerous.

In conclusion the petitioner respectfully submits and urges upon the Court that the submitted position of the respondent that to support a protective search the police officer must personally observe facts justifying a belief that an individual is armed and dangerous is not supported by existing legal authority and is not consistent with the legitimate requirements of police protection.

IV

The Arrest and Contemporaneous Search

In his written brief to the Second Circuit Court of Appeals the respondent suggested for the first time that his arrest for possession of his loaded pistol might be questioned for the reason that he could have had a permit to carry the weapon. This claim was never presented to the Connecticut Circuit Court, Superior Court or Supreme Court or the United States District Court.[1] It is further undisputed that he did not have any permit to carry the weapon, and no reference to that possibility is contained in his petition.

When advised of his Constitutional rights on Hamilton Street, respondent never indicated that he had a permit to carry a pistol (A-107). The speculation of such a pos-

[1] The record contains the Respondent's 14 page claim of law filed in the District Court and never mentioning the alleged possibility that if he had obtained a gun permit his possession of the weapon could have been legal. Accordingly no evidence was ever offered relative to the area of pistol permits and to the frequency with which they are issued.

siblity arose for the first time in the Second Circuit Court of Appeals. Authority distinguishing the difference between probable cause to arrest and proof beyond a reasonable doubt is legend and need not be repeated.

The petitioner respectfully submits that the heroin taken from the respondent's person and the machete taken from under the front seat of his automobile were seized legally incident to the respondent's valid arrest for possession of the pistol. The respondent and the automobile were searched on Hamilton Street immediately after he was arrested (A-94, 108). Unquestionably, when a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of his person and to an extent depending on the circumstances of the case, to the place where he is arrested. *Preston* v. *U.S.*, 376 U.S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777.

The petitioner submits that the machete was not beyond the area of the respondent's control. He alone knew it was under the seat. It is not unreasonable to assume that even after his arrest he could have made an effort to seize and use it. The petitioner disagrees with the respondent's comparison of the instant factual situation with that which existed in the case of *Shipley* v. *California*, 395 U.S. 818, 89 S. Ct. 2053, 23 L. Ed. 2d 732.

Conclusion

Respondent has never maintained, either expressly or implicitly, that Officer Connolly was showing a lack of courage in being concerned for his safety and welfare on Hamilton Street; that his actions were the product of a volatile or inventive imagination; or that he did not remove the revolver from respondent's waist or the heroin from his person.

Further, respondent has never offered any indication of what he would have done with his loaded revolver on that particular morning if it had not been removed. What would have happened will never be known.

Petitioner respectfully urges that the judgment of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

DONALD A. BROWNE,
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for Fairfield County,
Attorney for Petitioner.

Syllabus

ADAMS, WARDEN *v.* WILLIAMS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 70-283. Argued April 10, 1972—Decided June 12, 1972

Acting on a tip supplied moments earlier by an informant known to him, a police officer asked respondent to open his car door. Respondent lowered the window, and the officer reached into the car and found a loaded handgun (which had not been visible from the outside) in respondent's waistband, precisely where the informant said it would be. Respondent was arrested for unlawful possession of the handgun. A search incident to the arrest disclosed heroin on respondent's person (as the informant had reported), as well as other contraband in the car. Respondent's petition for federal habeas corpus relief was denied by the District Court. The Court of Appeals reversed, holding that the evidence that had been used in the trial resulting in respondent's conviction had been obtained by an unlawful search. *Held:* As *Terry v. Ohio*, 392 U. S. 1, recognizes, a policeman making a reasonable investigatory stop may conduct a limited protective search for concealed weapons when he has reason to believe that the suspect is armed and dangerous. Here the information from the informant had enough indicia of reliability to justify the officer's forcible stop of petitioner and the protective seizure of the weapon, which afforded reasonable ground for the search incident to the arrest that ensued. Pp. 145–149.

441 F. 2d 394, reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post*, p. 149. BRENNAN, J., filed a dissenting opinion, *post*, p. 151. MARSHALL, J., filed a dissenting opinion, in which DOUGLAS, J., joined, *post*, p. 153.

Donald A. Browne argued the cause and filed briefs for petitioner.

Edward F. Hennessey argued the cause and filed a brief for respondent.

Briefs of *amici curiae* urging reversal were filed by *Solicitor General Griswold, Assistant Attorney General Petersen,* and *Beatrice Rosenberg* for the United States; by *Frank S. Hogan, pro se, Michael R. Juviler,* and *Herman Kaufman* for the District Attorney of New York County; and by *Frank G. Carrington, Jr., Alan S. Ganz, Wayne W. Schmidt,* and *Glen R. Murphy* for Americans for Effective Law Enforcement, Inc., et al.

Burt Neuborne and *Melvin L. Wulf* filed a brief for the American Civil Liberties Union as *amicus curiae.*

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Robert Williams was convicted in a Connecticut state court of illegal possession of a handgun found during a "stop and frisk," as well as of possession of heroin that was found during a full search incident to his weapons arrest. After respondent's conviction was affirmed by the Supreme Court of Connecticut, 157 Conn. 114, 249 A. 2d 245 (1968), this Court denied certiorari. 395 U. S. 927 (1969). Williams' petition for federal habeas corpus relief was denied by the District Court and by a divided panel of the Second Circuit, 436 F. 2d 30 (1970), but on rehearing *en banc* the Court of Appeals granted relief. 441 F. 2d 394 (1971). That court held that evidence introduced at Williams' trial had been obtained by an unlawful search of his person and car, and thus the state court judgments of conviction should be set aside. Since we conclude that the policeman's actions here conformed to the standards this Court laid down in *Terry* v. *Ohio,* 392 U. S. 1 (1968), we reverse.

Police Sgt. John Connolly was alone early in the morning on car patrol duty in a high-crime area of Bridgeport, Connecticut. At approximately 2:15 a.m. a person known to Sgt. Connolly approached his cruiser

and informed him that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist.

After calling for assistance on his car radio, Sgt. Connolly approached the vehicle to investigate the informant's report. Connolly tapped on the car window and asked the occupant, Robert Williams, to open the door. When Williams rolled down the window instead, the sergeant reached into the car and removed a fully loaded revolver from Williams' waistband. The gun had not been visible to Connolly from outside the car, but it was in precisely the place indicated by the informant. Williams was then arrested by Connolly for unlawful possession of the pistol. A search incident to that arrest was conducted after other officers arrived. They found substantial quantities of heroin on Williams' person and in the car, and they found a machete and a second revolver hidden in the automobile.

Respondent contends that the initial seizure of his pistol, upon which rested the later search and seizure of other weapons and narcotics, was not justified by the informant's tip to Sgt. Connolly. He claims that absent a more reliable informant, or some corroboration of the tip, the policeman's actions were unreasonable under the standards set forth in *Terry* v. *Ohio*, *supra*.

In *Terry* this Court recognized that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Id.*, at 22. The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response.

See *id.*, at 23. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. *Id.*, at 21–22; see *Gaines* v. *Craven*, 448 F. 2d 1236 (CA9 1971); *United States* v. *Unverzagt*, 424 F. 2d 396 (CA8 1970).

The Court recognized in *Terry* that the policeman making a reasonable investigatory stop should not be denied the opportunity to protect himself from attack by a hostile suspect. "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," he may conduct a limited protective search for concealed weapons. 392 U. S., at 24. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law. So long as the officer is entitled to make a forcible stop,[1] and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose. *Id.*, at 30.

Applying these principles to the present case, we believe that Sgt. Connolly acted justifiably in responding to his informant's tip. The informant was known to him personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous telephone tip. The informant here came forward personally to give information that was immediately verifiable at the scene. Indeed, under

[1] Petitioner does not contend that Williams acted voluntarily in rolling down the window of his car,

Connecticut law, the informant might have been subject to immediate arrest for making a false complaint had Sgt. Connolly's investigation proved the tip incorrect.[2] Thus, while the Court's decisions indicate that this informant's unverified tip may have been insufficient for a narcotics arrest or search warrant, see, *e. g., Spinelli* v. *United States,* 393 U. S. 410 (1969); *Aguilar* v. *Texas,* 378 U. S. 108 (1964), the information carried enough indicia of reliability to justify the officer's forcible stop of Williams.

In reaching this conclusion, we reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person. Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule should not thwart an appropriate police response.

While properly investigating the activity of a person who was reported to be carrying narcotics and a concealed weapon and who was sitting alone in a car in a high-crime area at 2:15 in the morning, Sgt. Connolly

[2] Section 53–168 of the Connecticut General Statutes, in force at the time of these events, provided that a "person who knowingly makes to any police officer . . . a false report or a false complaint alleging that a crime or crimes have been committed" is guilty of a misdemeanor.

had ample reason to fear for his safety.[3] When Williams rolled down his window, rather than complying with the policeman's request to step out of the car so that his movements could more easily be seen, the revolver allegedly at Williams' waist became an even greater threat. Under these circumstances the policeman's action in reaching to the spot where the gun was thought to be hidden constituted a limited intrusion designed to insure his safety, and we conclude that it was reasonable. The loaded gun seized as a result of this intrusion was therefore admissible at Williams' trial. *Terry* v. *Ohio*, 392 U. S., at 30.

Once Sgt. Connolly had found the gun precisely where the informant had predicted, probable cause existed to arrest Williams for unlawful possession of the weapon. Probable cause to arrest depends "upon whether, at the moment the arrest was made . . . the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Beck* v. *Ohio*, 379 U. S. 89, 91 (1964). In the present case the policeman found Williams in possession of a gun in precisely the place predicted by the informant. This tended to corroborate the reliability of the informant's further report of narcotics and, together with the surrounding circumstances, certainly suggested no lawful explanation for possession of the

[3] Figures reported by the Federal Bureau of Investigation indicate that 125 policemen were murdered in 1971, with all but five of them having been killed by gunshot wounds. Federal Bureau of Investigation Law Enforcement Bulletin, Feb. 1972, p. 33. According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings—A Tactical Evaluation, 54 J. Crim. L. C. & P. S. 93 (1963).

gun. Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction. See *Draper* v. *United States*, 358 U. S. 307, 311–312 (1959). Rather, the court will evaluate generally the circumstances at the time of the arrest to decide if the officer had probable cause for his action:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar* v. *United States*, 338 U. S. 160, 175 (1949).

See also *id.*, at 177. Under the circumstances surrounding Williams' possession of the gun seized by Sgt. Connolly, the arrest on the weapons charge was supported by probable cause, and the search of his person and of the car incident to that arrest was lawful. See *Brinegar* v. *United States*, *supra*; *Carroll* v. *United States*, 267 U. S. 132 (1925). The fruits of the search were therefore properly admitted at Williams' trial, and the Court of Appeals erred in reaching a contrary conclusion.

Reversed.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MARSHALL concurs, dissenting.

My views have been stated in substance by Judge Friendly, dissenting, in the Court of Appeals. 436 F. 2d 30, 35. Connecticut allows its citizens to carry weapons, concealed or otherwise, at will, provided they have a permit. Conn. Gen. Stat. Rev. §§ 29–35, 29–38. Connecticut law gives its police no authority to frisk a person for a permit. Yet the arrest was for illegal possession of a gun. The only basis for that arrest was the informer's

tip on the narcotics. Can it be said that a man in possession of narcotics will not have a permit for his gun? Is that why the arrest for possession of a gun in the free-and-easy State of Connecticut becomes constitutional?

The police problem is an acute one not because of the Fourth Amendment, but because of the ease with which anyone can acquire a pistol. A powerful lobby dins into the ears of our citizenry that these gun purchases are constitutional rights protected by the Second Amendment which reads, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

There is under our decisions no reason why stiff state laws governing the purchase and possession of pistols may not be enacted. There is no reason why pistols may not be barred from anyone with a police record. There is no reason why a State may not require a purchaser of a pistol to pass a psychiatric test. There is no reason why all pistols should not be barred to everyone except the police.

The leading case is *United States* v. *Miller*, 307 U. S. 174, upholding a federal law making criminal the shipment in interstate commerce of a sawed-off shotgun. The law was upheld, there being no evidence that a sawed-off shotgun had "some reasonable relationship to the preservation or efficiency of a well regulated militia." *Id.*, at 178. The Second Amendment, it was held, "must be interpreted and applied" with the view of maintaining a "militia."

> "The Militia which the States were expected to maintain and train is set in contrast with Troops which they were forbidden to keep without the consent of Congress. The sentiment of the time strongly disfavored standing armies; the common view was that adequate defense of country and laws could be

secured through the Militia—civilians primarily, soldiers on occasion." *Id.*, at 178–179.

Critics say that proposals like this water down the Second Amendment. Our decisions belie that argument, for the Second Amendment, as noted, was designed to keep alive the militia. But if watering-down is the mood of the day, I would prefer to water down the Second rather than the Fourth Amendment. I share with Judge Friendly a concern that the easy extension of *Terry* v. *Ohio*, 392 U. S. 1, to "possessory offenses" is a serious intrusion on Fourth Amendment safeguards. "If it is to be extended to the latter at all, this should be only where observation by the officer himself or well authenticated information shows 'that criminal activity may be afoot.' " 436 F. 2d, at 39, quoting *Terry* v. *Ohio*, *supra*, at 30.

MR. JUSTICE BRENNAN, dissenting.

The crucial question on which this case turns, as the Court concedes, is whether, there being no contention that Williams acted voluntarily in rolling down the window of his car, the State had shown sufficient cause to justify Sgt. Connolly's "forcible" stop. I would affirm, believing, for the following reasons stated by Judge, now Chief Judge, Friendly, dissenting, 436 F. 2d, at 38–39, that the State did not make that showing:

> "To begin, I have the gravest hesitancy in extending [*Terry* v. *Ohio*, 392 U. S. 1 (1968)] to crimes like the possession of narcotics . . . . There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true. Against that we have here the added fact of the report that Williams had a gun on his person. . . . [But] Connecticut allows its citizens to carry weapons, concealed or

otherwise, at will, provided only they have a permit, Conn. Gen. Stat. §§ 29–35 and 29–38, and gives its police officers no special authority to stop for the purpose of determining whether the citizen has one. . . .

"If I am wrong in thinking that *Terry* should not be applied at all to mere possessory offenses, . . . I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a threefold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former. [In *Draper* v. *United States*, 358 U. S. 307 (1959),] Narcotics Agent Marsh would hardly have been at the Denver Station at the exact moment of the arrival of the train Draper had taken from Chicago unless *someone* had told him *something* important, although the agent might later have embroidered the details to fit the observed facts. . . . There is no such guarantee of a patrolling officer's veracity when he testifies to a 'tip' from an unnamed informer saying no more than that the officer will find a gun and narcotics on a man across the street, as he later does. If the state wishes to rely on a tip of that nature to validate a stop and frisk, revelation of the name of the informer or demonstration that his name is unknown and could

not reasonably have been ascertained should be the price.

"Terry v. Ohio was intended to free a police officer from the rigidity of a rule that would prevent his doing anything to a man reasonably suspected of being about to commit or having just committed a crime of violence, no matter how grave the problem or impelling the need for swift action, unless the officer had what a court would later determine to be probable cause for arrest. It was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessory offenses. If it is to be extended to the latter at all, this should be only where observation by the officer himself or well authenticated information shows 'that criminal activity may be afoot.' 392 U. S., at 30. . . . I greatly fear that if the [contrary view] should be followed, *Terry* will have opened the sluicegates for serious and unintended erosion of the protection of the Fourth Amendment."

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS joins, dissenting.

Four years have passed since we decided *Terry* v. *Ohio*, 392 U. S. 1 (1968), and its companion cases, *Sibron* v. *New York* and *Peters* v. *New York*, 392 U. S. 40 (1968). They were the first cases in which this Court explicitly recognized the concept of "stop and frisk" and squarely held that police officers may, under appropriate circumstances, stop and frisk persons suspected of criminal activity even though there is less than probable cause for an arrest. This case marks our first opportunity to give some flesh to the bones of *Terry*

et al. Unfortunately, the flesh provided by today's decision cannot possibly be made to fit on *Terry*'s skeletal framework.

"[T]he most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.' '[T]he burden is on those seeking the exemption to show the need for it.'" *Coolidge* v. *New Hampshire*, 403 U. S. 443, 454–455 (1971). In *Terry* we said that "we do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure." 392 U. S., at 20. Yet, we upheld the stop and frisk in *Terry* because we recognized that the realities of on-the-street law enforcement require an officer to act at times on the basis of strong evidence, short of probable cause, that criminal activity is taking place and that the criminal is armed and dangerous. Hence, *Terry* stands only for the proposition that police officers have a "narrowly drawn authority to . . . search for weapons" without a warrant. *Id.*, at 27.

In today's decision the Court ignores the fact that *Terry* begrudgingly accepted the necessity for creating an exception from the warrant requirement of the Fourth Amendment and treats this case as if warrantless searches were the rule rather than the "narrowly drawn" exception. This decision betrays the careful balance that *Terry* sought to strike between a citizen's right to privacy and his government's responsibility for effective law enforcement and expands the concept of warrantless

searches far beyond anything heretofore recognized as legitimate. I dissent.

I

A. The Court's opinion states the facts and I repeat only those that appear to me to be relevant to the Fourth Amendment issues presented.

Respondent was sitting on the passenger side of the front seat of a car parked on the street in a "high crime area" in Bridgeport, Connecticut, at 2:15 a. m. when a police officer approached his car. During a conversation that had just taken place nearby, the officer was told by an informant that respondent had narcotics on his person and that he had a gun in his waistband. The officer saw that the motor was not running, that respondent was seated peacefully in the car, and that there was no indication that he was about to leave the scene. After the officer asked respondent to open the door, respondent rolled down his window instead and the officer reached into the car and pulled a gun from respondent's waistband. The officer immediately placed respondent under arrest for carrying the weapon and searched him, finding heroin in his coat. More heroin was found in a later search of the automobile. Respondent moved to suppress both the gun and the heroin prior to trial. His motion was denied and he was convicted of possessing both items.

B. The Court erroneously attempts to describe the search for the gun as a protective search incident to a reasonable investigatory stop. But, as in *Terry, Sibron* and *Peters, supra,* there is no occasion in this case to determine whether or not police officers have a right to seize and to restrain a citizen in order to interrogate him. The facts are clear that the officer intended to make the search as soon as he approached the respondent. He asked no questions; he made no investigation; he simply searched.

There was nothing apart from the information supplied by the informant to cause the officer to search. Our inquiry must focus, therefore, as it did in *Terry* on whether the officer had sufficient facts from which he could reasonably infer that respondent was not only engaging in illegal activity, but also that he was armed and dangerous. The focus falls on the informant.

The only information that the informant had previously given the officer involved homosexual conduct in the local railroad station. The following colloquy took place between respondent's counsel and the officer at the hearing on respondent's motion to suppress the evidence that had been seized from him.

"Q. Now, with respect to the information that was given you about homosexuals in the Bridgeport Police Station [*sic*], did that lead to an arrest? A. No.

"Q. An arrest was not made. A. No. There was no substantiating evidence.

"Q. There was no substantiating evidence? A. No.

"Q. And what do you mean by that? A. I didn't have occasion to witness these individuals committing any crime of any nature.

"Q. In other words, after this person gave you the information, you checked for corroboration before you made an arrest. Is that right? A. Well, I checked to determine the possibility of homosexual activity.

"Q. And since an arrest was made, I take it you didn't find any substantiating information. A. I'm sorry counselor, you say since an arrest was made.

"Q. Was not made. Since an arrest was not made, I presume you didn't find any substantiating information. A. No.

"Q. So that, you don't recall any other specific information given you about the commission of crimes by this informant. A. No.

"Q. And you still thought this person was reliable. A. Yes." [1]

Were we asked to determine whether the information supplied by the informant was sufficient to provide probable cause for an arrest and search, rather than a stop and frisk, there can be no doubt that we would hold that it was insufficient. This Court has squarely held that a search and seizure cannot be justified on the basis of conclusory allegations of an unnamed informant who is allegedly credible. *Aguilar* v. *Texas*, 378 U. S. 108 (1964). In the recent case of *Spinelli* v. *United States*, 393 U. S. 410 (1969), Mr. Justice Harlan made it plain beyond any doubt that where police rely on an informant to make a search and seizure, they must know that the informant is generally trustworthy and that he has obtained his information in a reliable way. *Id.*, at 417. Since the testimony of the arresting officer in the instant case patently fails to demonstrate that the informant was known to be trustworthy and since it is also clear that the officer had no idea of the source of the informant's "knowledge," a search and seizure would have been illegal.

Assuming, *arguendo*, that this case truly involves not an arrest and a search incident thereto, but a stop and frisk,[2] we must decide whether or not the information possessed by the officer justified this interference with respondent's liberty. *Terry*, our only case to actually

[1] App. 96–97.

[2] *Terry* v. *Ohio*, 392 U. S. 1 (1968), makes it clear that a stop and frisk is a search and seizure within the meaning of the Fourth Amendment. When I use the term stop and frisk herein, I merely intend to emphasize that it is, as *Terry* held, a lesser intrusion than a full-scale search and seizure.

uphold a stop and frisk,[3] is not directly in point, because the police officer in that case acted on the basis of his own personal observations. No informant was involved. But the rationale of *Terry* is still controlling, and it requires that we condemn the conduct of the police officer in encountering the respondent.

Terry did not hold that whenever a policeman has a hunch that a citizen is engaging in criminal activity, he may engage in a stop and frisk. It held that if police officers want to stop and frisk, they must have specific facts from which they can reasonably infer that an individual is engaged in criminal activity and is armed and dangerous.[4] It was central to our decision in *Terry* that the police officer acted on the basis of his own personal observations and that he carefully scrutinized the conduct of his suspects before interfering with them in any way. When we legitimated the conduct of the officer in *Terry* we did so because of the substantial *reliability* of the information on which the officer based his decision to act.

If the Court does not ignore the care with which we examined the knowledge possessed by the officer in *Terry* when he acted, then I cannot see how the actions of the officer in this case can be upheld. The Court explains what the officer knew about respondent before accosting him. But what is more significant is what he did not know. With respect to the scene generally, the officer had no idea how long respondent had been in the car, how long the car had been parked, or to whom the car belonged. With respect to the gun,[5] the officer did not

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[3] In *Sibron* v. *New York*, 392 U. S. 40 (1968), the Court held that the action of the policeman could not be justified as a stop and frisk. In *Peters* v. *New York*, 392 U. S. 40 (1968), the Court sustained the validity of a search and seizure by holding that it was incident to a legal arrest.

[4] *Terry* v. *Ohio*, 392 U. S., at 29; *Sibron* v. *New York*, 392 U. S., at 64.

[5] The fact that the respondent carried his gun in a high-crime area

know if or when the informant had ever seen the gun, or whether the gun was carried legally, as Connecticut law permitted, or illegally.[6] And with respect to the narcotics, the officer did not know what kind of narcotics respondent allegedly had, whether they were legally or illegally possessed, what the basis of the informant's knowledge was, or even whether the informant was capable of distinguishing narcotics from other substances.[7]

Unable to answer any of these questions, the officer nevertheless determined that it was necessary to intrude on respondent's liberty. I believe that his determination was totally unreasonable. As I read *Terry*, an officer may act on the basis of *reliable* information short of probable cause to make a stop, and ultimately a frisk, if necessary; but, the officer may not use unreliable, unsubstantiated, conclusory hearsay to justify an invasion of liberty. *Terry* never meant to approve the kind of knee-jerk police reaction that we have before us in this case.

Even assuming that the officer had some legitimate reason for relying on the informant, *Terry* requires, before any stop and frisk is made, that the reliable information in the officer's possession demonstrate that the suspect is both armed and *dangerous*.[8] The fact remains that

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is irrelevant. In such areas it is more probable than not that citizens would be more likely to carry weapons authorized by the State to protect themselves.

[6] See Conn. Gen. Stat. Rev. § 29-35.

[7] Connecticut permits possession of certain narcotics under specified circumstances—*e. g.*, pursuant to a doctor's prescription. See Conn. Gen. Stat. Rev. §§ 19-443, 19-456 (c), 19-481.

[8] The Court virtually ignores the requirement that the suspect be dangerous, as well as armed. Other courts have followed *Terry* more closely. See, *e. g.*, *Commonwealth* v. *Bourke*, 218 Pa. Super. 320, 323, 280 A. 2d 425, 427 (1971); *Commonwealth* v. *Clarke*, 219 Pa. Super. 340, 343, 280 A. 2d 662, 663 (1971); *Finley* v. *People*, — Colo. —, 488 P. 2d 883 (1971). See also *State* v. *Goudy*, 52 Haw. 497, 505, 479 P. 2d 800, 805 (1971) (Abe, J., dissenting).

Connecticut specifically authorizes persons to carry guns so long as they have a permit. Thus, there was no reason for the officer to infer from anything that the informant said that the respondent was dangerous. His frisk was, therefore, illegal under *Terry*.

II

Even if I could agree with the Court that the stop and frisk in this case was proper, I could not go further and sustain the arrest and the subsequent searches. It takes probable cause to justify an arrest and search and seizure incident thereto. Probable cause means that the "facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offence has been committed . . . ." *Stacey* v. *Emery*, 97 U. S. 642, 645 (1878). "[G]ood faith is not enough to constitute probable cause." *Director General* v. *Kastenbaum*, 263 U. S. 25, 28 (1923).

Once the officer seized the gun from respondent, it is uncontradicted that he did not ask whether respondent had a license to carry it, or whether respondent carried it for any other legal reason under Connecticut law. Rather, the officer placed him under arrest immediately and hastened to search his person. Since Connecticut has not made it illegal for private citizens to carry guns, there is nothing in the facts of this case to warrant a man "of prudence and caution" to believe that any offense had been committed merely because respondent had a gun on his person.[9] Any implication that respondent's silence

[9] The Court appears to rely on the fact that the existence of the gun corroborated the information supplied to the officer by the informant. It cannot be disputed that there is minimal corroboration here, but the fact remains that the officer still lacked any knowledge that respondent had done anything illegal. Since carrying a gun is not *per se* illegal in Connecticut, the fact that respondent carried

was some sort of a tacit admission of guilt would be utterly absurd.

It is simply not reasonable to expect someone to protest that he is not acting illegally before he is told that he is suspected of criminal activity. It would have been a simple matter for the officer to ask whether respondent had a permit, but he chose not to do so. In making this choice, he clearly violated the Fourth Amendment.

This case marks a departure from the mainstream of our Fourth Amendment cases. In *Johnson* v. *United States*, 333 U. S. 10 (1948), for example, the arresting officer had an informant's tip and actually smelled opium coming from a room. This Court still found the arrest unlawful. And in *Spinelli* v. *United States*, 393 U. S. 410, we found that there was no probable cause even where an informant's information was corroborated by personal observation. If there was no probable cause in those cases, I find it impossible to understand how there can be probable cause in this case.

III

MR. JUSTICE DOUGLAS was the sole dissenter in *Terry*. He warned of the "powerful hydraulic pressures throughout our history that bear heavily on the Court to water down constitutional guarantees . . . ." 392 U. S., at 39. While I took the position then that we were not watering down rights, but were hesitantly and cautiously striking a necessary balance between the rights of American citizens to be free from government intrusion into their

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a gun is no more relevant to probable cause than the fact that his shirt may have been blue, or that he was wearing a jacket. Moreover, the fact that the informant can identify a gun on sight does not indicate an ability to do the same with narcotics. The corroboration of this one fact is a far cry from the corroboration that the Court found sufficient to sustain an arrest in *Draper* v. *United States*, 358 U. S. 307 (1959).

privacy and their government's urgent need for a narrow exception to the warrant requirement of the Fourth Amendment, today's decision demonstrates just how prescient MR. JUSTICE DOUGLAS was.

It seems that the delicate balance that *Terry* struck was simply too delicate, too susceptible to the "hydraulic pressures" of the day. As a result of today's decision, the balance struck in *Terry* is now heavily weighted in favor of the government. And the Fourth Amendment, which was included in the Bill of Rights to prevent the kind of arbitrary and oppressive police action involved herein, is dealt a serious blow. Today's decision invokes the specter of a society in which innocent citizens may be stopped, searched, and arrested at the whim of police officers who have only the slightest suspicion of improper conduct.